

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION  
HONORABLE STANLEY BLUMENFELD, JR., U.S. DISTRICT JUDGE

SANTA CLARITA VALLEY WATER AGENCY, )  
)  
PLAINTIFF, )  
)  
vs. )  
)  
WHITTAKER CORPORATION, et al., )  
)  
DEFENDANTS. )  
\_\_\_\_\_ )

CASE NO.  
CV 18-06825-SB  
VOLUME 3  
PAGES 220 TO 369

REPORTER'S TRANSCRIPT OF  
TRIAL DAY 2  
THURSDAY, NOVEMBER 18, 2021  
8:07 A.M.  
LOS ANGELES, CALIFORNIA

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Scott Fryer  
Ron Beaton  
Eric Lardiere

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1                   **THURSDAY, NOVEMBER 18, 2021; 8:07 A.M.**

2                   **LOS ANGELES, CALIFORNIA**

3                   **-oOo-**

4  
5                   (The following proceedings were held in  
6                   open court outside the presence of the jury:)

7                   THE COURT: Good morning, everyone. Let's call  
8                   the case, please.

9                   THE CLERK: Calling Case No. CV 18-06825-SB,  
08:07AM 10                  Santa Clarita Valley Water Agency versus Whittaker Corporation,  
11                  et al.

12                  Counsel, please state your appearances, starting  
13                  with the plaintiff's counsel.

14                  MR. RICHARD: Good morning, Your Honor.  
08:08AM 15                  Patrick Richard. With me, I have Ms. Scott, Mr. Gee, and our  
16                  client representative, Matt Stone, and our paralegal  
17                  Ms. Micevych.

18                  MR. GALLAGHER: Good morning, Your Honor.  
19                  Mike Gallagher for Whittaker. And with me is Daniel Trowbridge  
08:08AM 20                  and our client representative, Mr. Lardiere. Mr. Blum is  
21                  running a few minutes late. He will be here hopefully shortly.

22                  THE COURT: Good morning. We are outside the  
23                  presence of the jury.

24                  I did receive the challenged exhibits and wanted  
08:08AM 25                  to go through them in the time that we have before the jury

1 comes in. And I will have them brought in at 8:30 whether we  
2 get through it or not.

3 So with respect to the first witness  
4 Keith Abercrombie, the Court's tentative is to overrule the  
08:09AM 5 objection with respect to the 2015 Well V-201 settlement  
6 agreement. It is not hearsay, I think obviously not hearsay,  
7 not only because it's a legally operative document but, in all  
8 events, it is a document by Whittaker. So there is an  
9 exception under the Federal Rules of Evidence.

08:09AM 10 So let me very briefly see if Whittaker wishes to  
11 be heard on this.

12 MR. GALLAGHER: I tend to agree with Your Honor's  
13 assessment, but it's also completely irrelevant. It's almost a  
14 stipulated fact by now that we have paid for V-201 perchlorate  
08:09AM 15 treatment.

16 THE COURT: All right. The objection is  
17 overruled. There's absolutely no prejudice. I don't expect  
18 the plaintiff to spend more time than they need to. The  
19 parties have a certain amount of time each, so they should use  
08:10AM 20 it wisely. If they don't, they will just ultimately hurt  
21 themselves in the allocation of time. And that objection is  
22 preserved. You need not make the objection again at trial to  
23 preserve it.

24 MR. GALLAGHER: Thank you, Your Honor.

08:10AM 25 THE COURT: With regard to 491-A, let's just

1 start there. This relates also to the subsequent challenged  
2 exhibits. But with regard to Whittaker's objection about never  
3 having been given these documents in discovery, when did you  
4 first get these documents, Mr. Gallagher?

08:10AM

5 MR. GALLAGHER: Sorry, Your Honor. Just before  
6 trial. Maybe weeks before trial.

7 THE COURT: And the parties have not been shy  
8 about filing in limine motions or requesting the Court's  
9 attention to address issues between the parties. This was not  
10 one of them, was it?

08:11AM

11 MR. GALLAGHER: It was not one of them.

12 THE COURT: All right. So it's not my intention  
13 to adjudicate this dispute at this point. To the extent that  
14 you believe that this was a serious matter, I have little doubt  
15 Whittaker would have brought it to the Court's attention, not  
16 on the eve of trial but in the context of an in limine motion.

08:11AM

17 That doesn't resolve the matter. I still need to  
18 hear whether there's going to be an adequate foundation for the  
19 introduction of this, Exhibit 491-A, as well as the others of a  
20 similar nature.

08:11AM

21 So let me hear from you, Mr. Gee, as it appears  
22 this is your witness.

23 MR. GEE: Yes, Your Honor.

24 Those exhibits are really updates of

08:12AM

25 Mr. Abercrombie's declaration that was submitted to Whittaker

1 as part of Mr. Zelikson's expert report. So Whittaker has  
2 had --

3 THE COURT: Mr. Gee, I have already resolved that  
4 issue. Focus, please, on the question of foundation.

08:12AM 5 MR. GEE: Yes. We will establish foundation with  
6 the witness.

7 THE COURT: And just give me a very quick offer  
8 of proof as to how this witness is going to be able to testify  
9 not only about past cost with respect to replacement and  
08:12AM 10 blending but also future costs.

11 MR. GEE: Well, Mr. Abercrombie has been -- he  
12 has been general manager at a lot of different water agencies.  
13 And so the costs -- you know, he is -- has a lot of experience  
14 with the cost of different water supplies and the use of  
08:13AM 15 different water supplies that are -- that are used by Valencia  
16 Water Company, which is where he spent most of his career. And  
17 he's also a project manager.

18 So what the replacement and blend water are,  
19 they're costs that are --

08:13AM 20 THE COURT: Let me pause you for a moment here  
21 because, as I see it, there are past costs --

22 MR. GEE: That's correct.

23 THE COURT: -- which are established paid,  
24 presumably percipient knowledge costs.

08:13AM 25 MR. GEE: Yes, Your Honor.



1 THE COURT: And then there's future costs. So  
2 does Mr. Abercrombie have percipient knowledge of the  
3 historical costs?

4 MR. GEE: Yes, he does.

08:13AM 5 THE COURT: And how so?

6 MR. GEE: He is the Chief Operating Officer for  
7 the Santa Clarita Valley Water Agency, and he has been vice  
8 president at Valencia Water Company. So he is actually in  
9 charge of knowing how much blend water needs to be inputted.

08:14AM 10 He's the one that signed the NPDES permit that establishes what  
11 the quantity of water is. And he has knowledge through his  
12 experience as the general manager and the Chief Operating  
13 Officer of the water.

14 THE COURT: As the Chief Operating Officer, he is  
08:14AM 15 familiar with the actual payment for the replacement and the  
16 blending?

17 MR. GEE: We actually went through this during  
18 summary judgment, and Whittaker actually contested the fact  
19 that these calculations are based on the costs -- the actual  
08:14AM 20 cost of purchased water and the amount of purchased water.  
21 There is no separate invoice for purchased water that's used  
22 for different purposes.

23 THE COURT: So it's a matter of allocation?

24 MR. GEE: It's a matter of allocation.

08:15AM 25 THE COURT: And he has a sufficient foundation to

1 establish the allocation?

2 MR. GEE: Yes, he does.

3 THE COURT: What about the future costs?

4 MR. GEE: For future costs, he has plenty of  
08:15AM 5 project management experience. So future costs are based on --  
6 let me back up just a second.

7 The cost of blending water and replacement water  
8 are accruing costs. I mean, they have -- until we install the  
9 treatment project, they will be costs that will be accrued.

08:15AM 10 And basically his -- his project experience allows him to  
11 estimate how long it would take to install each project. And  
12 he has the knowledge of how much the water costs and he has  
13 some project engineering experience. So he's got plenty of  
14 experience on conducting net present value of future cost  
08:16AM 15 stream experience.

16 THE COURT: Mr. Gallagher, why doesn't this  
17 really all go to the weight that should be assigned to this  
18 evidence?

19 MR. GALLAGHER: Well, there are a number of  
08:16AM 20 issues with 201, Your Honor. As we discussed the DDW primarily  
21 in this permitting issue, as we understand it, the permit is  
22 nearly going to be issued. So the question of whether or not  
23 there will be any need for blending water is completely  
24 speculative. The blending water is actually needed so it can  
08:16AM 25 be discharged to the river, right, because there are too high

1 of sulfates, too high of TDS.

2 THE COURT: I can appreciate all of that. And  
3 time is short, so I'm going to have to be very focused here.  
4 That appears to me to go to the weight. It's up to the jury,  
08:17AM 5 is it not, for them to decide whether it is ultimately going to  
6 be reasonably necessary?

7 MR. GALLAGHER: It may be, Your Honor. But an  
8 additional fact is there's no need to pump this well and  
9 discharge it to the river. So, in other words, it's  
08:17AM 10 speculative. I don't think it's beneficial to the jury to  
11 hear. I think it's a lot of guesswork, considering the nature  
12 and the status of the DDW permit. If that's something we need  
13 to get into, we will get into it. But I just don't think it's  
14 necessary at this time.

08:17AM 15 THE COURT: I'm not prepared to cut it off. It  
16 appears to me that it does go to the weight that the jury  
17 ultimately will assign it. I do not believe that it is so  
18 speculative as you have presented it that the Court should take  
19 essentially the issue from the jury.

08:17AM 20 Once the Court has ruled in that fashion,  
21 Mr. Gallagher, would you agree that the charts are actually  
22 helpful? All they're going to do is provide in writing what  
23 Mr. Abercrombie could ultimately do in a chart right before the  
24 jury?

08:18AM 25 MR. GALLAGHER: I think the problem is it's

1 completely speculative. So I don't think it helps the jury at  
2 all, considering the nature of this well and where it's --

3 THE COURT: But that goes back to the argument  
4 that I have just ruled upon; correct?

08:18AM 5 MR. GALLAGHER: That is true.

6 THE COURT: All right. So with that, if that is  
7 the only basis for argument, the Court will allow it, provided  
8 there is a proper foundation.

9 And that, I believe, takes us to -- there are two  
08:18AM 10 Tab 6s. Let me make sure I get the actual exhibit number. It  
11 appears it's Exhibit 1376. And even though the information I  
12 have says exhibits in dispute defendant intends to use, is this  
13 an exhibit that the plaintiff intends to introduce? This is  
14 the FTPS blending summary.

08:19AM 15 MR. GEE: No, Your Honor. We're not intending to  
16 introduce that exhibit.

17 THE COURT: The difficulty I'm having is that the  
18 chart that the parties provided to me does not actually  
19 correspond to the contents. So it appears that the exhibit is  
08:19AM 20 503.1. And this is something that you do intend to use?

21 MR. GEE: Yes. Yes, Your Honor. I'm sorry. It  
22 is a little bit confusing.

23 THE COURT: Tell me why I should allow it. It  
24 appears to me that you have not provided the requisite  
08:19AM 25 information under Federal Rules of Evidence 1006. There is no

1 response to that, so I'm taking that as a concession.

2 MR. GEE: Actually, we produced the underlying  
3 data for this exhibit, and we just put it in chart form. As a  
4 matter of fact, this is part -- this is part of our case in  
08:20AM 5 chief that the turnout -- turnout information establishes that  
6 it cannot be Whittaker. So what we did is we basically took  
7 the information that defendants are using to make their case,  
8 and we just put it in a chart form.

9 THE COURT: I didn't understand that,  
08:20AM 10 Mr. Gallagher. If that is true, I'm not sure what the argument  
11 is.

12 MR. GALLAGHER: I'm actually a little bit  
13 confused by his comment. We were not provided this  
14 information, this chart in any way, shape, or form through  
08:20AM 15 expert discovery. So it's -- they had time to rebut whatever  
16 arguments we made about turnouts and their misunderstanding or  
17 inability to identify where this came from. And now at the  
18 11th hour, they have come up with, I feel like, more  
19 information, new information, different information well past  
08:21AM 20 expert discovery.

21 THE COURT: I can't figure out what the facts are  
22 here in the couple moments that I have. What I'm hearing  
23 Mr. Gee to say is that they simply took the data that you  
24 provided to them and did nothing more than converted it into a  
08:21AM 25 chart form. Now, I don't know whether that's true or not true.

1 If it's true, you would have no dispute presumably. If it's  
2 not true, you would have a dispute.

3 MR. GALLAGHER: It's not true. It's their data.  
4 It's not our data.

08:21AM 5 THE COURT: Mr. Gee, did I misunderstand you?

6 MR. GEE: Yes, you did, Your Honor. It's data  
7 that we provided to Whittaker and Whittaker is using as  
8 their -- as basically case in chief in their defense.

9 THE COURT: So this is based upon data that you  
08:21AM 10 provided fully and just now have put into a chart form in,  
11 essentially, rebuttal to what you expect Whittaker intends to  
12 do with the data?

13 MR. GEE: Yes, Your Honor.

14 THE COURT: All right. Mr. Gallagher, is that  
08:22AM 15 factual or not factual?

16 MR. GALLAGHER: We respectfully disagree. We  
17 asked for this data numerous times. It was incomplete. Now  
18 all of a sudden we get this complete set of data in now a chart  
19 form.

08:22AM 20 THE COURT: Here's what I'm going to do. I can't  
21 figure this out on the spot. You both are telling me different  
22 things factually. You're ordered to meet and confer, Mr. Gee,  
23 in person with Mr. Gallagher and you're to provide him  
24 precisely with the data. You are to demonstrate to him how you  
08:22AM 25 came to make this chart precisely so he has as much information

1 as you do with respect to this chart.

2 In the meantime, the motion to exclude it is  
3 granted, subject to the Court revisiting the issue. So you're  
4 not to use this document with Mr. Abercrombie until the Court  
08:22AM 5 has further information.

6 Then moving on to Exhibit 231 with  
7 Mr. Abercrombie, the Court is inclined to allow this. I don't  
8 see the prejudice here in allowing this.

9 Let me hear from -- I think it's the plaintiff  
08:23AM 10 who is objecting to this. This is the information sheet by SCV  
11 Water, and it refers to the water being potable because it  
12 meets drinking water standards. That is obviously going to be  
13 an issue, it seems to me, in this case, particularly in  
14 connection with damages-type issues. And I don't see anything  
08:23AM 15 in here that would seem to qualify in the nature of character  
16 evidence or, as I see it, 403 evidence.

17 Who is addressing this? Mr. Gee?

18 MR. GEE: Yes, Your Honor. I will have to go --  
19 I will have to argue this based on your description because we  
08:24AM 20 don't have that in our chart. It is the press release related  
21 to V-201 NPDES permit. I have no objections to it.

22 THE COURT: It's, as I just read it, information  
23 sheet Well V-201 NPDES exceedance. It has a couple of  
24 attachments. And the objection that you made that you provided  
08:24AM 25 to the Court was that this is objectionable because it's

1 irrelevant, prejudicial, with no probative value. That's what  
2 you objected. Are you withdrawing your objection?

3 MR. GEE: I don't think we have the right  
4 exhibit number.

08:25AM 5 No, actually, thinking about the document, what  
6 the press release basically indicates is that the -- I think  
7 the -- what the exhibit does is it is confusing to the jury  
8 because basically Santa Clarita Valley Water Agency does not  
9 determine what is safe to drink and what is not safe to drink.

08:25AM 10 That is the purview of DDW.

11 THE COURT: You can explain that to the jury with  
12 witnesses, can't you?

13 MR. GEE: Yes.

14 THE COURT: All right. The objection is  
08:25AM 15 overruled.

16 You have preserved your objection. You need not  
17 make it again.

18 MR. GALLAGHER: Your Honor, if I may just to  
19 clarify, it was our Exhibit 1376. So counsel has it.

08:25AM 20 THE COURT: All right. We are moving on.

21 And we're now at Alan Sorsher. With regard to  
22 Exhibit 459, apparently this is simply being marked for  
23 identification. So with that, it doesn't appear to me that  
24 there's anything to rule on.

08:26AM 25 I will say this. The Court learned a good deal



1 of information yesterday in the opening statements that very  
2 well may affect the Court's calculation of the 403 issues that  
3 have been so frequently discussed in this case, at least as of  
4 late, and in the in limine motions regarding waste disposal  
08:26AM 5 practices, waste sites and the like.

6 It was my understanding that Whittaker was making  
7 an attempt to keep the evidence very focused on TCE, PCE, and  
8 perchlorate. And I saw yesterday that in the opening statement  
9 there was a lot of information that was presented to the jury  
08:27AM 10 without objection by stipulation with respect to a number of  
11 these documents that refer to indiscriminate dumping, that  
12 refers to mystery memos, that refers to numerous sites on the  
13 Whittaker site building by building where there was  
14 indiscriminate dumping and things of that nature, that the  
08:27AM 15 Hula Bowl is a disaster area, all illegal industrial and  
16 sanitary waste must be removed, on and on and on.

17 And in the context of what Whittaker had  
18 understood to be undisputed evidence that would come in, I'm  
19 going to have to better understand why the Court would exclude  
08:27AM 20 the evidence that's already been admitted or will be admitted  
21 without objection.

22 So I don't have time to go through this now.  
23 It's 8:28. We're going to have the jury come in in two  
24 minutes. This is not an open invitation to the plaintiff to  
08:28AM 25 just simply produce anything they want. If they produce any of

1 the references to criminal conduct or search warrants, there's  
2 going to be severe consequences.

3 With regard to the Court's general direction, I  
4 still expect, Mr. Richard, that you are going to comply with  
08:28AM 5 it. If you are presenting a document and offering it in, the  
6 Court is not going to be able on the fly or even after looking  
7 at these documents, which are multipage documents with a lot in  
8 there without context, for me to be able to make an informed  
9 judgment as to whether or not there is a serious nexus between  
08:28AM 10 the claims in this case and the activities and the consequences  
11 of the activities at the Whittaker site.

12 And so I am going to simply hold you to the  
13 direction that I gave you. And if I find out that you've taken  
14 liberties with it, I will have to address it and I will address  
08:29AM 15 it.

16 But what I can tell the parties is that right now  
17 from the Whittaker side of the aisle here is that I'm no longer  
18 inclined to try to slice it and dice it as I was doing  
19 previously. I don't think I was intentionally misled. But it  
08:29AM 20 would have been helpful for the Court to know from Whittaker  
21 that it had not objected to almost all of this evidence that  
22 the Court was focused on as being a 403 concern.

23 And I appreciate your acknowledging it  
24 nonverbally, Mr. Gallagher. And I hope the parties will take  
08:29AM 25 that into account. This is, again, just another example of

1 where the parties have me chasing after a certain issue without  
2 disclosing the really key relevant stuff that enables me to  
3 make an informed judgment. And I spend a lot of time, a lot of  
4 energy trying to get it right based upon what the parties  
08:30AM 5 present, only to have the carpet or the rug pulled out right  
6 from under me when I find out more information.

7 So I'm going to assume that you did this in good  
8 faith and this was not in bad faith. But I'm not going to  
9 continue to give the parties the benefit of the doubt. And I  
08:30AM 10 am going to have to start to address what I perceive  
11 potentially as being misconduct by the parties.

12 MR. GALLAGHER: Understood, Your Honor.

13 THE COURT: With that, that's as far as I can go.  
14 We are going to bring in the jury if they are ready.

08:30AM 15 THE CLERK: Yes, they are.

16 THE COURT: All right. Let's bring them in,  
17 please.

18 (The following proceedings were held in  
19 open court in the presence of the jury:)

08:31AM 20 THE COURT: Please be seated.

21 We are on the record in Santa Clarita Valley  
22 Water Agency versus Whittaker. And we have all counsel present  
23 and their representatives at counsel table, and we are also  
24 joined by the jury.

08:31AM 25 Good morning, ladies and gentlemen.

1           As you recall, you listened to opening statements  
2 yesterday by both parties. And at this time, you will start to  
3 hear evidence. We are in the plaintiff's case in chief. And  
4 so the plaintiff will start calling witnesses.

08:31AM

5           And, Mr. Richard, who is your first witness?

6           MR. RICHARD: Yes, Your Honor. I believe we have  
7 arranged for the Zoom call that we had advised the Court. I  
8 didn't have a chance in the last few minutes --

9           THE CLERK: Didn't tell me.

08:32AM

10          THE COURT: I am unaware of a Zoom call, so maybe  
11 you can call another witness, please.

12          MR. RICHARD: Okay.

13          THE COURT: Are you able to do that, Mr. Richard,  
14 or is that a problem?

08:32AM

15          MR. RICHARD: We have another witness, but we  
16 have a witness waiting. It was Mr. Sorsher, the father with  
17 the health issues, Your Honor. We had advised counsel and the  
18 Court. I thought this had been set up, but my apologies.

08:32AM

19          THE COURT: No, no. It's not your fault. Do we  
20 have the Zoom call set?

21          THE CLERK: I don't, Your Honor. I wasn't aware  
22 of it this morning.

23          MR. RICHARD: He has the link. Again, my  
24 apologies.

08:32AM

25          THE COURT: Well, we are just going to have to

1 just work around this. The Court's apologies to the parties.

2 THE CLERK: It will take me two minutes, Judge.  
3 Two or three minutes.

08:32AM

4 THE COURT: All right. Just a couple minutes. I  
5 think we can accommodate that.

6 MR. RICHARD: Thank you. Again, Your Honor, my  
7 apologies.

8 THE COURT: It's all right.

08:33AM

9 And while you're arranging that, let me just  
10 address the jury and place this on the record as well.

11 Each of you has been provided, I believe, with  
12 the stipulation of facts in this case. The lawyers were good  
13 enough to have them copied so that you can all have your own  
14 copies. You are free to hold on to those copies and keep them  
15 along with your notebooks. I do not intend to retrieve them.

08:34AM

16 If you prefer, if you want to leave them in the  
17 jury room rather than carrying them with you, that's fine as  
18 well. But you're free to keep them with you along with your  
19 notebooks.

08:34AM

20 MR. RICHARD: Can I step up to the podium,  
21 Your Honor?

22 THE COURT: You may.

23 MR. RICHARD: With optimism that we will be able  
24 to connect with Mr. Sorsher.

08:34AM

25 THE COURT: Yes.

1 THE CLERK: Good morning, Mr. Sorsher. This is  
2 the clerk speaking, Victor Cruz. Can you hear me?

3 Good morning, Mr. Sorsher. This is the clerk  
4 speaking. Are you able to hear me? If you are, please unmute  
08:36AM 5 yourself and turn on your video.

6 Good morning, Mr. Sorsher. This is the clerk  
7 speaking. Are you able to hear me?

8 MR. RICHARD: I'm advised that Mr. Sorsher cannot  
9 hear the courtroom deputy clerk.

08:38AM 10 THE COURT: We're going to give it one more try  
11 and hopefully this will work.

12 MR. RICHARD: I understand, Your Honor. We will  
13 call our next witness if we need to.

14 THE CLERK: Good morning, Mr. Sorsher. This is  
08:39AM 15 the clerk speaking. Are you able to hear me?

16 THE COURT: All right. Mr. Sorsher, you are  
17 actually being heard in the courtroom. So please just first  
18 acknowledge that you are Alan Sorsher.

19 MR. SORSHER: Alan Sorsher, yes.

08:39AM 20 THE COURT: All right. You are in the courtroom  
21 and we are going to proceed now with your testimony. Before we  
22 do so, are you present by yourself?

23 MR. SORSHER: Yes, I am.

24 THE COURT: There is no one else in the room  
08:39AM 25 where you are?

1 MR. SORSHER: That's correct.

2 THE COURT: All right. Let's go ahead and  
3 proceed. Let's have him sworn in.

08:40AM 4 THE CLERK: Mr. Sorsher, could you please turn on  
5 your video? Would you please raise your right hand to be  
6 sworn, sir.

7 Sir, do you solemnly swear that the testimony you  
8 shall give in the cause now before this Court shall be the  
9 truth, the whole truth, and nothing but the truth, so help you  
08:40AM 10 God?

11 THE WITNESS: I do.

12 THE CLERK: Sir, for the record, would you please  
13 state your name and then spell your last name.

14 THE WITNESS: Alan Sorsher, S-o-r-s-h-e-r.

08:40AM 15 THE CLERK: Thank you.

16 THE COURT: Mr. Richard.

17 MR. RICHARD: Thank you very much, Your Honor.

18 **ALAN SORSHER,**

19 **CALLED BY THE PLAINTIFF, WAS SWORN.**

08:40AM 20 **DIRECT EXAMINATION**

21 BY MR. RICHARD:

22 Q Good morning, Mr. Sorsher. Can you hear me okay?

23 A Yes.

24 Q Let's get right to it. Can you tell us at some  
08:40AM 25 point did you work for what became known as the California

1 Department of Toxic Substances Control?

2 A Yes.

3 Q And when did you start there?

4 A About -- I believe it was June of 1984.

08:41AM 5 Q And how long did you work with the toxic  
6 substances division?

7 A Until December 1995, I believe. It was -- yeah.  
8 11 years plus a few months.

9 Q And then where did you work, sir?

08:41AM 10 A I transferred to the Department of Health  
11 Services Drinking Water Field Operations Branch program.

12 Q When was that?

13 A That started in January of 1996.

14 Q And what was your position or positions when you  
08:41AM 15 were with the toxic substances division from '84 until the end  
16 of '95?

17 A I started off -- I believe I was waste management  
18 engineer. Then I was promoted to associate waste management  
19 engineer after I got my PE license. And then I was promoted to  
08:42AM 20 senior waste management engineer, which was first level  
21 supervisory position.

22 Q You mentioned something called a PE license. Can  
23 you briefly tell us what that is?

24 A Well, I've had one attorney liken it to passing  
08:42AM 25 the bar. I had to have a certain amount of experience. There



1 was a -- an eight-hour engineering fundamentals exam you had to  
2 pass. And then if you passed the fundamentals, you took the  
3 licensing exam in your specialty area. Mine was chemical  
4 engineering.

08:42AM

5 Q Thank you.

6 I was just asking if you can tell the jury what  
7 PE stands for.

8 A Oh, I'm sorry. Professional engineer.

9 Q Okay. Thank you.

08:43AM

10 And can you very briefly describe your  
11 educational background and tell us how you came to be an  
12 environmental engineer.

13 A Well, I -- I had a degree, Bachelor of Science  
14 degree in chemical engineering, Polytechnic Institute of  
15 Brooklyn, which at a time later merged with NYU. I had several  
16 other positions until 1984. I was always involved with liquid  
17 solid separations or corrosion resistant materials equipment.  
18 And then in 1984, I was hired by the Toxic Substances Control  
19 division.

08:43AM

20 Q Okay. And at some point did you have  
21 responsibility while you were with the DTSC -- did you have  
22 some responsibility for the Bermite-Whittaker site?

23 A Yes, I did.

24 Q And how did that come about?

08:44AM

25 A Well, each of us was assigned certain facilities

1 to oversee, regulate. And I was given the Bermite facility at  
2 one point.

08:44AM 3 Q And can you briefly describe your  
4 responsibilities when you first became assigned to that site,  
5 sir?

6 A Yes. They were undergoing what we called a RCRA  
7 closure, which means they had to close certain regulated units  
8 that were regulated under RCRA, Resource Conservation and  
9 Recovery Act. It was a federal law with a state analog of  
08:45AM 10 that. And so they were -- they were undergoing closure because  
11 they had ceased operations.

12 Q So I think you just answered my next question.  
13 How would you describe the status of the Whittaker site at that  
14 time?

08:45AM 15 MR. GALLAGHER: Objection, Your Honor. Lacks  
16 foundation.

17 THE COURT: Sustained.

18 Q BY MR. RICHARD: All right. Did you become  
19 familiar with this site after it was assigned to you and review  
08:45AM 20 plans related to what you just described as their closure plan?

21 A Yes. I reviewed their closure plan, and I  
22 visited the site a number of times.

23 Q And did you speak to anyone from Whittaker in the  
24 course of your duties for DTSC?

08:45AM 25 A My main contact was their environmental

1 consultant, Norman Wenck, and his company. There was also  
2 several Whittaker employees still on the payroll at the time,  
3 although the facility was mainly shut down and they were in  
4 closure.

08:46AM

5 Q Okay. And what do you mean when you say they  
6 were in closure?

7 A Well, they would -- they were trying to achieve  
8 what we call clean closure. They were looking to sell the  
9 property.

08:46AM

10 Q And can you tell -- go ahead.

11 A Closure -- clean closure is when they remove all  
12 hazardous waste constituents and confirm that there is no --  
13 nothing left there that might endanger future uses of the  
14 property. And if that's the case, then they have unrestricted  
15 use of the property versus restricted use if they leave  
16 hazardous waste constituents in place.

08:46AM

17 Q And is that called a closure in place?

18 A You could call that a closure in place or a  
19 landfill-type closure where they have to make sure that nothing  
20 escapes from the site and they have to continue maintaining the  
21 controls and monitoring indefinitely.

08:47AM

22 Q And so what was your role at the time on these  
23 closure of these -- what did you call them? RCRA waste  
24 management units?

08:47AM

25 A Yes. My role was to review their plan of closure

1 and oversee it. And then, you know, if they achieved closure,  
2 that they would get a letter from the department acknowledging  
3 the clean closure.

08:47AM 4 Q Okay. I would like to show you what the parties  
5 have stipulated may be presented. It's trial Exhibit 505, a  
6 letter from Norman Wenck, May 1st, 1987.

7 MR. RICHARD: May we publish this, Your Honor?

08:48AM 8 THE COURT: Yes. You need not request  
9 publication if you notify the Court that it is a stipulated  
10 exhibit.

11 MR. RICHARD: Thank you, Your Honor.

12 (Marked for identification and received

13 into evidence Exhibit No. 505.)

08:48AM 14 Q BY MR. RICHARD: Do you have Exhibit 505,  
15 Mr. Sorsher?

16 A 505. I'm not sure what one that is referring to.

17 MR. RICHARD: Mr. Cruz, can we --

18 THE CLERK: Yes. I have 505. That's the May  
19 letter.

08:48AM 20 MR. RICHARD: It might be helpful, Your Honor, if  
21 my assistant, Ms. Micevych, was promoted to, I think, panelist  
22 or somehow she can share her screen and we can do this  
23 electronically and perhaps move it along. That is my extent of  
24 my knowledge of what it would take.

08:49AM 25 THE CLERK: I will do that now.

1 THE COURT: Please.

2 MR. RICHARD: Thank you.

3 Q So you have a hard copy of Exhibit 505, sir?

4 A Yes, I do.

08:49AM 5 Q While we are connecting so the jury can follow  
6 along -- there we go. So this is a letter to -- you're one of  
7 the recipients, May 1st, 1987?

8 A Yes.

9 Q And that's where you worked at the time?

08:49AM 10 A Yes.

11 Q Did your office move at some point? It looks  
12 like you were in Downtown L.A. at this time.

13 A Yes. I believe in 1989 after the earthquake, we  
14 moved to an office in Burbank on San Fernando Road. And then  
08:50AM 15 about two years later, the lease was up and we moved to our --  
16 an office space in Glendale on Grandview, I believe.

17 Q So you had an office in Glendale at some point in  
18 1991?

19 A I'm not sure exactly when we moved. I think it  
08:50AM 20 was '91, maybe '92, but early '90s we were in Glendale.

21 Q Okay. And this Exhibit 505 that you have in  
22 front of you, it's from Norman Wenck, and that's the fellow you  
23 mentioned that you spoke to a number of times? He worked with  
24 Whittaker; is that right?

08:50AM 25 A That's correct.

1 Q And did you also meet with him from time to time?

2 A Yes. I met with him maybe, I don't know,  
3 somewhere between six and 20 times over the years -- several  
4 years.

08:51AM 5 Q Okay. At some point you said that you visited  
6 the site; is that right?

7 A Yes.

8 Q Was that in 1987?

9 A I'm sure I was there in '87.

08:51AM 10 Q Okay. Do you have Exhibit 460, sir? It's a  
11 letter from July 7, 1987, that the parties have also stipulated  
12 to.

13 (Marked for identification and received  
14 into evidence Exhibit No. 460.)

08:51AM 15 THE WITNESS: I believe I have that. But if you  
16 have it on the screen, it would be easier.

17 Yeah. I see it.

18 Q BY MR. RICHARD: Okay. And this is another  
19 letter. This one is just to you from Mr. Wenck; is that right?

08:51AM 20 A Yes.

21 Q He refers -- it looks like you had a meeting on  
22 June 1st, 1987. Do you see that?

23 A Yes, I do. Correct.

24 Q At the bottom of the page, he refers to something  
08:52AM 25 you just mentioned. Do you see where he says, "It is requested

1 that permission be granted for clean closure of these units and  
2 permission be granted for disposition of these units"?

3 A Yes. I see that.

08:52AM

4 Q So is it fair to say that in July 1987, Whittaker  
5 was attempting to obtain a clean closure?

08:52AM

6 A Yes. It also refers to five units. It doesn't,  
7 you know -- they had several above-ground storage units and  
8 burning cages, pans and rails that were fairly easy to see that  
9 they would -- you know, it was not a result -- it was not a  
10 risk to the environment. So I think we closed -- we granted  
11 clean closure to those units but not the other units.

12 Q And did those other units include impoundments at  
13 the Whittaker site?

08:53AM

14 A Yes. They had listed with EPA two surface  
15 impoundments known as the 317 impoundment and a 342  
16 impoundment.

17 Q And, sir, what's an impoundment in this context?

18 A It's kind of -- it can be thought of as kind of a  
19 pool for storing liquid waste.

08:53AM

20 Q And at the time of -- in mid 1987, what was the  
21 status of your discussions regarding the surface pond at --  
22 what you referred to as the 317 pond?

08:54AM

23 A Well, they had removed it on their own before  
24 they had an approved closure plan. I believe they did that in  
25 1983. And they were trying to prove to us that there was no

1 hazardous waste constituents left to impact the environment.

2 In order to do that, they would have to prove  
3 that, you know, they had removed all hazardous waste and  
4 constituents from the soil and that there was no impact to the  
08:54AM 5 groundwater around -- beneath and around that impoundment.

6 Q And had they done -- had they made that showing  
7 to you and DTSC as of July 1987?

8 A No, they had not.

9 Q And for these RCRA units that you mentioned, how  
08:54AM 10 were those identified? Who decides where the RCRA units are?  
11 Who did at the time? Is that you or someone else?

12 A Well, in 1981, you know, as the RCRA law was  
13 passed, then the regulations were promulgated, they had to  
14 register -- they had to fill out what they call a RCRA Card A  
08:55AM 15 which kind of describes the RCRA units they had in existence at  
16 that time. And that's -- I believe that's where that initial  
17 description came from.

18 Q So it's Whittaker that identifies for the  
19 environmental regulators the RCRA units on their site?

08:55AM 20 A Yeah. That were -- those were the ones that were  
21 in operation or in existence at the time those regulations went  
22 into effect.

23 Q Okay. And we saw in Exhibit 505 a reference to a  
24 Gordon Louttit as one of the folks who was copied. Do you know  
08:56AM 25 who Gordon Louttit was?



1           A           Yes. He was a vice president, counsel for  
2           Whittaker. I only met with him maybe two or three times,  
3           maybe -- you know, much less frequently than Norman Wenck.

4           Q           Okay. Did you ever meet a Mr. John Peloquin?

08:56AM 5           A           I believe I met him once or twice. My memory is  
6           pretty cloudy on that.

7           Q           Okay. Did you tour the site with Mr. Peloquin at  
8           some point in June or July 1987?

9           A           I believe I did.

08:56AM 10          Q           Do you remember who led that tour from Whittaker?

11          A           Well, it was Peloquin and Glen Abdinor I think  
12          was present. I'm not sure. It was so long ago.

13          Q           What's your understanding of what that visit was?  
14          What was your purpose of that visit in July 1987?

08:57AM 15          A           Well, that particular visit was as part of U.S.  
16          EPA's RCRA facility assessment. You know, there was this  
17          additional request for historic waste management units that had  
18          not been captured under the original RCRA regulations. So we  
19          were going through the facility and kind of on a tour for a day  
08:57AM 20          or two there.

21          Q           To identify what? Say that again. What was the  
22          facility assessment? What was the purpose of that?

23          A           We were trying to find or identify additional  
24          areas of historical waste management that had not been captured  
08:58AM 25          under the original RCRA regulations from 1981.

1 Q And typically would those areas include  
2 landfills?

3 A It could include landfills. Anything else that  
4 had been shut down before the regulations went into effect.

08:58AM 5 Q Okay. So in the -- and how long did you work  
6 with Whittaker on their closure of these various waste  
7 management units?

8 A Oh, it was a number of years. They had quite a  
9 bit of difficulty with the surface impoundments. And, you  
08:58AM 10 know, as I said, then I was promoted to another position within  
11 the department. And then in June '96, I left for the drinking  
12 water program altogether. So I kind of lost track of it.

13 Q Sure.

14 And what do you mean when you say or when you  
08:58AM 15 testify that they had quite a bit of difficulty with the  
16 impoundments?

17 A Well, especially the 317 impoundment, which  
18 was -- they identified that and described it as about  
19 30,000 gallons. It was located up on a hill, as I recall. And  
08:59AM 20 they were required to prove that there was no groundwater  
21 contamination from that impoundment.

22 So because they had built the impoundment up on  
23 top of the hill, they had to drill these deep wells. You know,  
24 we were requiring them to drill deep wells. And the nature of  
08:59AM 25 the soils there was difficult for drilling. And so we went

1 back and forth with them for a number of years. And finally, I  
2 guess there was -- we pretty much told them what they had to  
3 do. We kept waiting for them to come up with a good plan, but  
4 you know, I guess the -- us and the department and the U.S. EPA  
09:00AM 5 finally sent them an order telling them what to do.

6 Q Okay. Before we get to that, sir, you mentioned  
7 that they were required to answer certain questions as part of  
8 that closure and Part A application process with the EPA.

9 Did you ever receive a copy of responses from  
09:00AM 10 Whittaker to the EPA describing their various waste management  
11 units?

12 A Well, I don't know if you're referring to the  
13 closure plan or their solid waste --

14 THE COURT: One second. One second, please. You  
09:01AM 15 need to repeat your answer because you cut out.

16 THE WITNESS: Okay. I was wondering if  
17 Mr. Richards was referring to the RCRA closure plan or the  
18 additional plan or the additional information that they --

19 MR. RICHARD: Yes. So let me clarify.

09:01AM 20 Q At some point, did you receive additional  
21 information from Whittaker regarding their solid waste  
22 management units?

23 A Yes, I did.

24 Q Okay. Is there a shorthand phrase for solid  
09:01AM 25 waste management units?

1 A Well, the abbreviation SWMU, which we call *SWMU*.

2 Q That's a phrase you used at the time?

3 A Yeah. It was common usage at the time.

4 Q I'm afraid I'm going to say smurfs, but I'll try  
09:01AM 5 to stick with SWMU.

6 Can you take a look at Exhibit 501? It's a  
7 letter -- again, stipulated between the parties -- dated  
8 August 25th, 1988.

9 (Marked for identification and received

09:02AM 10 into evidence Exhibit No. 501.)

11 Q BY MR. RICHARD: Do you have that handy, sir?

12 A I have that, but I also see it on the screen.

13 Q Let's go with the screen.

14 Is this a letter that you were copied on in  
09:02AM 15 August 1988?

16 A Yes. My name is at the bottom of that letter.  
17 And also, it's on Whittaker letterhead.

18 Q And do you know in this time frame, 1987/1988  
19 whether Whittaker was still seeking approval for what you  
09:02AM 20 described as a clean closure?

21 A Yeah. They were still seeking approval for their  
22 RCRA units. But, you know, these were in addition to their  
23 RCRA units.

24 Q And this letter is from whom?

09:02AM 25 A Gordon Louttit.

1 Q Are you familiar with this type of document, sir?

2 A I'm not sure what you mean by "this type of  
3 document." It's just a cover letter.

4 Q Okay.

09:03AM 5 A For a report.

6 Q Sure. I will clarify.

7 If you can turn to page 2.

8 A Okay. That's the certification that they were  
9 supposed to sign.

09:03AM 10 Q That was my question. Are you familiar with  
11 certifications for the SWMU response letters from the  
12 businesses that had these issues?

13 A I don't know if I actually worked on any others  
14 that had RCRA facility assessments. But in general, we were  
09:03AM 15 relying on these facilities, these businesses, to tell us the  
16 truth and be complete and be forthcoming because we basically  
17 did not have resources or personnel to be out there 24 hours a  
18 day, seven days a week, 365 days a year. So we pretty much  
19 relied on them to submit documents under penalty of perjury.

09:04AM 20 Q Okay. Did you say you rely on them to tell the  
21 truth? I missed the first part.

22 A Yes, I did.

23 Q Okay. And if you could turn to the next page of  
24 Exhibit 501. It's called "Documentation Report, Solid Waste  
09:04AM 25 Management Units."

1 A Yes.

2 Q So this is the document that Whittaker certified  
3 was true and correct?

4 A Yes.

09:04AM

5 Q And if you could turn to the next page of  
6 Exhibit 501. It's called "Table 1, units which were present at  
7 the facility."

8 A Yes.

9 Q And the first type of unit is what, sir?

09:04AM

10 A It says landfill.

11 Q Okay. And then if we turn to -- it says, yes,  
12 they had landfills. And the comment says go to Table 2.1.

13 A Correct.

14 Q That's page 6 of this document.

09:05AM

15 Can you tell us the significance of this table  
16 regarding landfills, where it says, "Detailed information on  
17 units which were present"?

18 A Well, it's basically saying that this is what we  
19 had present and these were the landfill units present.

09:05AM

20 Q And is this the portion of the document where you  
21 would have expected Whittaker in 1988 to identify the landfills  
22 that had been present -- that were present at the site?

23 A Yes.

24 Q And so, if we go down and they talk about

09:05AM

25 location of unit and they identify Hula Bowl and East Fork and

1 they refer to some figures, do you see that?

2 A Yes. Yes. I would like to say, also, at this  
3 point that, when they submitted this document, they combined  
4 their RCRA units with the SWMU. It kind of made the document  
09:06AM 5 larger and it kind of made it less clear what was going on.

6 Q Okay. With respect to -- you had the opportunity  
7 to talk to Whittaker after 1988 about this document?

8 A I believe so, but I don't recall any specific.  
9 We did have meetings over the years with them.

09:06AM 10 Q Okay. And under the -- we see "Capacity." Do  
11 you see that for the three landfills that they identify,  
12 Hula Bowl 1, Hula Bowl 2, East Fork?

13 A Yes.

14 Q And it says "Units closed"?

09:07AM 15 A Yes.

16 Q Can you tell us what that means? What did that  
17 mean at the time?

18 A Well, again, this was a document prepared by  
19 their side. So as far as they were concerned, it was not -- it  
09:07AM 20 was closed. It was not an issue.

21 Q And Whittaker described at the time in this  
22 document -- it says "Description of materials." Is that where  
23 you would expect them to describe what was actually in those  
24 three landfills?

09:07AM 25 A Yes, I would.

1 Q And under the question, "Are materials considered  
2 hazardous," what was the answer?

3 A They said, "No."

09:07AM

4 Q And under the question as to where there were  
5 releases, the answer was?

6 A They said, "None."

09:07AM

7 Q And if that was true, if there were no hazardous  
8 substances and no hazardous substances released at the  
9 Hula Bowl, then there were -- there's a reference to corrective  
10 action. Would corrective action be needed if there was no  
11 hazardous releases?

12 A That's true.

09:08AM

13 Q I mean, typically at the time, if there were  
14 releases of hazardous substances, then would you expect there  
15 to be corrective action?

09:08AM

16 A Well, if there was suspicion of releases, the  
17 next step would have been a RCRA facility assessment to  
18 determine the nature and extent of the releases. And then they  
19 would have had to come up with a plan to remediate those  
20 releases.

21 Q And at some point in time after 1988, did you  
22 learn that there were more than three landfills that Whittaker  
23 had described as no hazardous materials, no hazardous releases,  
24 and no corrective action needed?

09:08AM

25 A Yes. I -- in March of 1991, I received what I



1 call a mystery memo because we don't know who sent it in. It  
2 came in anonymously.

3 Q It came in to whom, sir?

4 A It came to me. It was mailed to my office.

09:09AM 5 Q And who dubbed it "the mystery memo"?

6 A I don't know. Maybe I did. Or, you know -- I  
7 discussed it initially with the local staff counsel because it  
8 had been -- it had stated confidential, attorney-client and he  
9 said, no, it's not. So he sent a copy of it up to our legal  
09:09AM 10 headquarters people in Sacramento. And I also prepared a cover  
11 memo for that, describing what had happened on that day.

12 Q Okay. So if we could look at what the parties  
13 have stipulated to as Exhibit 445.

14 (Marked for identification and received  
09:09AM 15 into evidence Exhibit No. 445.)

16 Q BY MR. RICHARD: If you could tell us, this memo  
17 is dated -- it's to Whittaker Corporation from Wenck  
18 Associates. It's dated June 22, 1987, regarding investigation  
19 of landfills on Bermite facility through June 19th, 1987. Is  
09:10AM 20 this what you referred to as the mystery memo?

21 A That's correct. I believe it was nine pages or  
22 so.

23 Q And you did not receive this memo until when?

24 A I believe it was March 8, 1991. We were in the  
09:10AM 25 Burbank office.

1 Q Okay. Before we go through it line by line, you  
2 read this memo at the time as you described and you talked to a  
3 number of people within the department. After you had read  
4 this, can you just give us a big picture sense of the  
09:11AM 5 significance of this mystery memo at the time you received it  
6 and read it?

7 A Well, it was a sense of kind of shock and  
8 surprise because their 1988 submittal was saying how innocuous  
9 the site was. And so, you know, not a lot of attention was put  
09:11AM 10 on it. And now in 1991, I get this other memo which is saying  
11 they found all these things there. They were digging this  
12 stuff up basically behind my back. So there was a sense of a  
13 little bit of shock and surprise about it.

14 Q Okay. Let's go through it, then, a little bit.  
09:11AM 15 By the way, when you say the 1988 memo, that's  
16 the document we just looked at, you said something about  
17 innocuous so we didn't focus on it. Can you explain what you  
18 meant by that?

19 A Yeah. Well, you know, in their list on their  
09:11AM 20 hazardous, I think it was Table 2-1, they said there was only  
21 metals and scrap paper and other inert harmless materials were  
22 found. So that -- that painted a picture that, you know, this  
23 was all innocuous.

24 Q And then in this document just on page 1, if we  
09:12AM 25 could look at the paragraph that begins -- I don't know if you

1 can enlarge or just highlight -- "the landfills have been  
2 found." Super.

3 A Yes.

4 Q And --

09:12AM 5 A In the bottoms.

6 Q Go ahead.

7 A Well, I was just reading it. Everybody can read  
8 it. "The landfills have been found in the bottoms and on the  
9 sides of valleys and embankments. The fill to cover up the

09:12AM 10 landfills has come from the nearby hillsides. The estimated  
11 volume of the individual landfills has varied from a few tons  
12 of cubic yards to approximately 35,000 cubic yards."

13 The use of the landfills, evidently, was anywhere  
14 from one day to possibly 40 years or more.

09:13AM 15 Q And why --

16 A Bermite had been in business since 1904, I  
17 believe. Quite a few years.

18 Q The next paragraph states, "The materials" -- do  
19 you see that?

09:13AM 20 A Yeah.

21 Q "The materials that have been found in the  
22 landfills has varied from inert metal, scrap," which you just  
23 told us about, "to liquid and solid hazardous wastes."

24 A Yes.

09:13AM 25 Q Had you and the EPA been told by Whittaker in

1 1987 or 1988 about liquid and solid hazardous wastes in those  
2 landfills?

3 A No.

09:13AM 4 Q And we see a couple other references to hazardous  
5 wastes and the removal of those from landfills. Do you believe  
6 you had been told about that in 1987 or 1988?

7 A No. I don't believe I had.

8 Q And in this context, can you explain for us what  
9 "inert" means, when it talks about inert scrap?

09:14AM 10 A "Inert" means something that's not reactive,  
11 that's going to basically stay in its own condition. For  
12 example, steel metal would -- well, it turns to rust but that's  
13 about it, versus something that might explode or be toxic.

14 Q Okay. If you could go to the next page of  
09:14AM 15 Exhibit 445, this mystery memo that you received in March 1991.  
16 There's a paragraph in the middle of the page. "The percentage  
17 of hazardous wastes that have been found in each landfill site  
18 has varied from an estimated 1 percent to approximately  
19 85 percent."

09:14AM 20 Do you see that?

21 A Yes.

22 Q The same paragraph goes on to talk about --  
23 refers to hazardous waste again and concludes, "On average,  
24 about five drums per day have been discovered over the last  
09:15AM 25 month."

1                   Was that information significant to you when you  
2                   received it in 1991?

3                   A           Yeah. It was kind of, like, wow. You know, five  
4                   drums per day, that would be, like -- times 30 days in a month,  
09:15AM 5                   that would be 150 drums. That's a lot of drums. And, you  
6                   know, that's only one month. You know, I don't know how long  
7                   they have been doing this exploration.

8                   Q           They hadn't told you about this in 1987 or 1988?

9                   A           That's correct.

09:15AM 10                  Q           And the conclusion of this part of the mystery  
11                  memo, that paragraph begins, "Further investigation and  
12                  characterization of the known and potential landfills is  
13                  necessary in order to feel confident that a good faith effort  
14                  has been expended to find all wastes on site."

09:16AM 15                  In your line of work at the time, what did the  
16                  words "characterization of a site" mean?

17                  A           Well, that would mean to find the concentrations  
18                  and the lateral and vertical extent of contamination.

19                  Q           And the memo goes on to state, "The removal of  
09:16AM 20                  all known landfill wastes is necessary if the facility is to be  
21                  closed clean." Is that something you told us about earlier,  
22                  that Whittaker was hoping to have a clean closure of their  
23                  site?

24                  A           Yes.

09:16AM 25                  Q           And a clean closure at the time would allow them

1 to, what? Sell it for unrestricted use?

2 A Yes. Again, the clean closure term is basically  
3 for RCRA units. But if an RFA unit, a SWMU, had been removed,  
4 then they would also be able to sell the property without land  
09:17AM 5 restriction.

6 Q And then a couple lines down in that same  
7 paragraph, it says, "When the RFA" -- what's your understanding  
8 of what an RFA was?

9 A Well, that stands for RCRA facility assessment.  
09:17AM 10 It's basically looking at the historical SWMUs that were not  
11 captured under the normal RCRA facilities.

12 Q Okay. Quote, "When the RFA identifies landfills  
13 left on the property and if the percentage of hazardous wastes  
14 so far are indicative of the remaining known and unknown  
09:18AM 15 landfills, those landfills would be treated as hazardous wastes  
16 and will be declared RCRA units," period, close quote.

17 Had RCRA shared with you in 1987 anything to that  
18 effect, that they understood that the amount of hazardous waste  
19 already found could be indicative of further hazardous waste at  
09:18AM 20 remaining known and unknown landfills?

21 A No, they hadn't. But it also shows that they --  
22 they're conflating the two, the RCRA units and the SWMUs.

23 Q Okay. And why would that be an issue?

24 A Well, it just shows that they were confused.

09:18AM 25 They weren't real clear on what they were doing, in my mind.

1           Q           Okay. Had anyone told you in 1987 or 1988 what  
2 we see in the next sentence, to the effect that the cost of  
3 investigating those other landfills could be tremendous?

4           A           No. They had not discussed that with me.

09:19AM 5           Q           It goes on to say at the bottom of page 2 of this  
6 mystery memo, Exhibit 445, "The removal and disposal of the  
7 landfill wastes will then most likely exceed the present cost  
8 estimates for removal and disposal. This is so because it is  
9 likely that much more of the wastes will be required to be  
09:19AM 10 disposed of as hazardous wastes." It goes on to identify some  
11 costs.

12                       In general, did you have an understanding at the  
13 time that it would be more expensive for Whittaker or other  
14 folks dealing with waste -- it's more expensive to dispose of  
09:19AM 15 hazardous waste properly than to dispose of non-hazardous  
16 waste?

17                       MR. GALLAGHER: Objection. Lacks foundation.

18                       THE COURT: Overruled.

19                       You can answer.

09:20AM 20                       THE WITNESS: Yes. That was my understanding.

21           Q           BY MR. RICHARD: And then if we could turn to  
22 page 5 of this mystery memo, there's a reference to various  
23 landfills. Let's start with that first category. Landfills  
24 that have been removed, and you see eight of them listed there.

09:20AM 25                       Do you see that?

1 A Yes, I do.

2 Q Again, this is in a memo dated June 22, 1987,  
3 that you received in 1991; is that right?

4 A That's correct.

09:20AM 5 Q And before you got this memo, Whittaker had told  
6 you about three landfills; is that right?

7 A Yes.

8 Q And here we see how many?

9 A We see eight here.

09:20AM 10 Q Okay. And those are landfills that had been  
11 removed?

12 A Yes.

13 Q Had you learned before this that Whittaker was  
14 removing landfills?

09:21AM 15 A No, I had not.

16 Q And then the next category is landfills  
17 investigated but not removed. Do you see that?

18 A Yes.

09:21AM 19 Q And there's a reference to the burn pit as a  
20 landfill.

21 A Yes. That was interesting.

22 Q And when -- why was it interesting, sir?

23 A Well, they had also listed a burn pit, I believe,  
24 as one of their RCRA units.

09:21AM 25 Q And up until 1988, had Whittaker told you that



1 they also used the burn pit as a landfill?

2 A No, they had not.

3 Q Do you remember if when you went on that tour in  
4 July 1987, whether Mr. Peloquin showed you the Hula Bowl  
09:21AM 5 landfills or the East Fork landfill?

6 A No. I don't recall the specific areas we  
7 visited.

8 Q Did you later learn that he hadn't shown you some  
9 landfills?

09:22AM 10 A Well, I mean, this memo kind of indicates that  
11 they hadn't shown us everything.

12 Q Okay. If you could go to the next page of the  
13 mystery memo, page 6, do you see the reference to East Fork?

14 A Yes.

09:22AM 15 Q And under comments, how was the East Fork  
16 landfill described?

17 A It says that up to 85 percent of the material is  
18 waste. Some organic vapors were detected in the initial cut of  
19 the face of the landfill.

09:22AM 20 Q What would the significance be of being able to  
21 smell organic vapors with an initial cut of the landfill?

22 MR. GALLAGHER: Lacks foundation.

23 THE COURT: Sustained.

24 Q BY MR. RICHARD: When you received this memo and  
09:23AM 25 read those words, did they have any meaning for you?

1           A           Well, it could have been that they were checking  
2     the cuts with what -- an organic vapor analyzer, a field unit  
3     that would detect organic vapors coming out of the soil as they  
4     dug up the area.

09:23AM

5           Q           Let me stop you there. As a chemical engineer,  
6     were you -- in your experience by this point, were you familiar  
7     that there could be vapors from organic materials?

8           A           I was familiar with that, yes.

09:23AM

9           Q           And if volatile organic chemicals or compounds  
10    were in sufficient concentration, was it your understanding and  
11    experience at the time that those vapors could actually be  
12    smelled from the ground?

09:24AM

13          A           If they were high enough, they could be smelled.  
14    We don't know if these were -- you know, again, I didn't write  
15    this. So they say detected, but I don't know how they detected  
16    it.

17          Q           Right. This was new information for you in 1991?

18          A           Right. That's correct.

09:24AM

19          Q           Okay. And then at the next page where he's  
20    talking about Hula Bowl, under comments for Hula Bowl 1, "This  
21    is the largest landfill identified at the facility. There have  
22    been a few drums found in the randomly selected backhoe pits."  
23    Do you see that?

24          A           Yes.

09:24AM

25          Q           And do you recall Whittaker providing you any

1 information about drums that had been found in the landfill  
2 back in 1987 or 1988?

3 A No. They did not.

09:25AM 4 Q And would finding buried drums be of concern to  
5 you, given your role regarding the closure of these RCRA and  
6 hazardous waste units?

7 A Yes. It would certainly trigger suspicion and  
8 request for a proper investigation.

09:25AM 9 Q Why would finding buried drums trigger further  
10 investigation?

11 A Well, the drums could have been -- you know, we  
12 don't know what kind of chemicals were in the drums and, you  
13 know, if the drums had leaked, if there was solvents in the  
14 drums. We knew nothing. Basically they were doing this  
09:25AM 15 without any agency oversight. So it's very unclear. The fact  
16 that it was unclear would have triggered more investigation by  
17 us if we had known about it.

18 Q And at the time, did you have a phrase you used  
19 when you suspected that a company with hazardous waste was  
09:26AM 20 cleaning up sites without telling you?

21 MR. GALLAGHER: Lacks foundation. Relevance,  
22 Your Honor.

23 THE COURT: Sustained on the latter ground.

24 Q BY MR. RICHARD: How did you refer to this  
09:26AM 25 particular -- these particular efforts of cleaning up landfills

1 without first telling the regulators about them at the time?

2 MR. GALLAGHER: Same objection, Your Honor.

3 Relevance.

4 THE COURT: Same question. Sustained. Please

09:26AM 5 don't ask the same question when I have sustained an objection.

6 MR. RICHARD: Yes, Your Honor.

7 THE COURT: It was slightly different but to the  
8 same effect, and I understand that.

9 MR. RICHARD: Okay. Thank you. I will move on.

09:26AM 10 Q Can you tell us, sir, in light of the 1988

11 submittal we reviewed where Whittaker identified three  
12 landfills and you described that as innocuous, how did the  
13 mystery memo impact your work involving Whittaker?

14 A Well, as I said, we forwarded it to our  
09:27AM 15 headquarter's legal office. And, you know, at that point I was  
16 more suspicious and skeptical of what Whittaker was saying.

17 Q At some point did you -- do you recall -- you  
18 said you met with Mr. Gordon Louttit two or three times. Do  
19 you recall meeting with him in your Glendale office at some  
09:27AM 20 point?

21 A Yes, I do recall meeting with him in Glendale.

22 Q And how was it that you recall a meeting with  
23 Mr. Louttit so many years ago at your Glendale office?

24 A Well, the thing that was outstanding in my mind  
09:27AM 25 is that -- and I don't recall his exact words. But he -- at

1 one point in the meeting, he came out and said something to the  
2 effect of, "Well, we shouldn't expect them to tell us  
3 everything. We shouldn't expect them to be honest and  
4 forthcoming." And that surprised me.

09:28AM

5 Q Why would that surprise you?

6 A Because as I had stated before, we rely on these  
7 companies to be truthful and complete in their disclosure to  
8 us.

09:28AM

9 Q And so this was Mr. Gordan Louttit. You  
10 understood his position with Whittaker at the time was what?

11 A He was a vice president, I believe, or some, you  
12 know, corporate position. Norman Wenck reported to  
13 Gordon Louttit.

09:29AM

14 Q And at some point in time, sir, after you got the  
15 mystery memo, did you actually review handwritten notes  
16 addressed to Mr. Gordon Louttit, referring to your visit to the  
17 site in 1987?

09:29AM

18 A Well, there were documents supplied to us. The  
19 department took certain actions after the mystery memo had come  
20 up.

21 Q And do you recall that -- however they got to  
22 you, did you review handwritten notes from Mr. Peloquin  
23 addressed to Gordon Louttit that referred to your visit to the  
24 site in 1987?

09:29AM

25 MR. GALLAGHER: Your Honor, objection.

1 Relevance. Moving into --

2 THE COURT: Overruled.

3 You can answer the question.

4 THE WITNESS: Okay. I believe I did. There was

09:30AM 5 many, many documents furnished to me at that time.

6 Q BY MR. RICHARD: I'd like to show you what the  
7 parties have stipulated to. It's Exhibit 449.

8 (Marked for identification and received  
9 into evidence Exhibit No. 449.)

09:30AM 10 Q BY MR. RICHARD: I was just going to ask you  
11 whether -- there's a reference here to Gordon Louttit, and he  
12 refers to enclosed is something, rough notes. Are these  
13 referring to a July 16, 1987, inspection? Do you see that?

14 A Yes.

09:30AM 15 Q And then in the middle of the memo -- it's hard  
16 to read. But towards the end of a line, it begins, "After  
17 checking the list, I note that we didn't get to East Fork.  
18 Just can't imagine how that happened."

19 Do you see the exclamation points there? There's  
09:31AM 20 actually an arrow --

21 A Yes, I do. Yes, I do. Yes, I do.

22 Q Does this refresh your memory that, among the  
23 many documents you later saw, there are handwritten notes  
24 regarding a visit in July 1987?

09:31AM 25 A Vaguely. As I said, there were many -- this

1 July 16th, this must have been the RFA visit with EPA and their  
2 consultants.

3 Q Okay.

4 A Where Peloquin was present.

09:31AM 5 Q And do you believe Mr. Peloquin showed you the  
6 East Fork landfill during that particular visit?

7 A I really don't recall.

8 Q Okay. Any reason to believe that when he's  
9 telling Gordon Louttit, the gentleman you just told us about,  
09:31AM 10 that it slipped his mind -- let me ask it this way.

11 Do you have a memory or do you believe that you  
12 visited the landfills that Mr. Peloquin was telling Mr. Louttit  
13 he didn't show you?

14 MR. GALLAGHER: Asked and answered.

09:32AM 15 THE COURT: Sustained.

16 Q BY MR. RICHARD: Anything else you recall  
17 regarding that conversation with Mr. Louttit, either your  
18 demeanor or his, that meeting in Glendale at your office when  
19 he told you that -- in effect, that you should expect him to be  
09:32AM 20 less than forthcoming?

21 MR. GALLAGHER: Argumentative.

22 THE COURT: Overruled. You can answer.

23 THE WITNESS: Well, I remember the meeting room.  
24 We had a long rectangular meeting table, and I was at one end  
09:32AM 25 and Mr. Louttit was at the other. It was oriented east and

1 west. And on the left, on the south side of the room, were  
2 windows. I recall that. And that's about it.

3 MR. RICHARD: Okay. I think that's all I have at  
4 this time, Your Honor.

09:33AM 5 THE COURT: Cross-examination.

6 MR. GALLAGHER: Yes, Your Honor.

7 Your Honor, may we transfer sharing capabilities,  
8 in the event I need it, to my colleague?

9 THE COURT: Yes.

09:33AM 10 THE CLERK: He will have to log in.

11 MR. GALLAGHER: He is logged in.

12 THE COURT: If you would kindly proceed, and  
13 hopefully we will get it done at the point in time that you  
14 need it.

09:33AM 15 MR. GALLAGHER: Thank you, Your Honor.

16 **CROSS-EXAMINATION**

17 BY MR. GALLAGHER:

18 Q Mr. Sorsher, can you actually see me?

19 A No, I can't.

09:33AM 20 Q This is all new to me, too. I have never  
21 cross-examined someone on Zoom.

22 Nice to meet you, sir. How are you today?

23 A Okay. I think you need to turn on your camera.  
24 It's not showing.

09:34AM 25 Q It's all right. We can move on. But you can



1 hear me okay; correct?

2 A Yes, I can. Yes, I can.

3 Q Just a couple questions came to mind during your  
4 testimony.

09:34AM 5 Had you ever performed a RCRA assessment prior to  
6 visiting the Whittaker site?

7 A I don't think so.

8 Q Okay. Now, you are familiar with RCRA, I assume,  
9 sir?

09:34AM 10 A Yes.

11 Q And it was enacted in 1976; correct?

12 A I'm not sure exactly when it was enacted, but '76  
13 sounds about right.

14 Q And the rules and the regulations that went into  
09:34AM 15 effect under RCRA came in in 1980; correct?

16 A I believe that's correct.

17 Q Okay. And the rules at that time under RCRA, if  
18 there were landfills that were closed, did the RCRA regulations  
19 apply to those landfills?

09:35AM 20 A No. They were required under the SWMUs.

21 Q Okay. And the SWMU didn't come into effect until  
22 when? 1984, sir; is that correct?

23 A Probably.

24 Q Any reason to disagree with me?

09:35AM 25 A No. I just don't recall exactly when the --

1 these dates came up.

2 Q Understood.

3 Now, you said you visited the site at least once;  
4 correct?

09:35AM 5 A That's correct.

6 Q Did you visit the site more than once?

7 A Yes.

8 Q More than five times?

9 A Probably.

09:35AM 10 Q Okay. Now, you have a general understanding that  
11 the site operated for -- at least since 1903 or '04, I believe  
12 you testified; is that correct?

13 A I think that's correct, yes.

14 Q Did you ever perform an assessment on the history  
09:36AM 15 of the site and the operations at that site?

16 A It wasn't -- no. It was not my job.

17 Q Okay. Do you have any understanding of the  
18 operations that were conducted prior to Whittaker's  
19 occupation -- prior to Whittaker's time at the site?

09:36AM 20 A No, I don't. It was before my time.

21 Q Do you know -- strike that.

22 Now, do you have an understanding of how -- the  
23 first time any volatile organic compounds were used at the  
24 site?

09:36AM 25 A No. They -- no, I don't, other than it was

1 listed in their Part A application of RCRA.

2 Q Okay. Now, do you know what kind of work  
3 Whittaker did while it was operating at the site?

4 A Yeah. They produced munitions, rockets, flares,  
09:37AM 5 that sort of thing.

6 Q Were they a Department of Defense contractor?

7 A I believe so, but I don't have personal knowledge  
8 of it.

9 Q I will represent to you, sir, that they were a  
09:37AM 10 Department of Defense contractor.

11 Do you know --

12 THE COURT: Counsel, do not make that  
13 representation. Ask a clean question. That's stricken.

14 MR. GALLAGHER: Yes, sir.

09:37AM 15 THE COURT: The jury is to disregard it.

16 Q BY MR. GALLAGHER: Do you know if the Defense  
17 Contractor Administrative Services had an office on the site?

18 A I don't know that.

19 Q Do you know what the Defense Contractor  
09:38AM 20 Administrative Services does, what its function is?

21 A No, I don't.

22 Q Have you ever heard of the Department of Defense  
23 contractor safety manual?

24 A No, I haven't.

09:38AM 25 Q Do you know -- we talked briefly about

1 impoundment 317. Do you recall that?

2 A Yes.

3 Q Okay. And impoundment 317 was investigated;  
4 correct?

09:38AM 5 A To some degree, yes.

6 Q And Whittaker took effort to close that  
7 impoundment; correct?

8 A It took efforts, yes.

9 Q Do you understand what kind of chemicals were  
09:39AM 10 disposed of at that impoundment?

11 A Yes. According to their Part A RCRA application,  
12 they used solvents. I believe they were perchloroethylene and  
13 trichloroethylene.

14 Q Do you know the last time trichloroethylene was  
09:39AM 15 disposed of in that impoundment 317?

16 A No, I don't.

17 Q Do you know what activity Whittaker undertook to  
18 address the contamination found at impoundment 317?

19 A I know some of it.

09:39AM 20 Q Do you know if they installed an SVE system, soil  
21 vapor extraction system, at impoundment 317?

22 A I believe they did at some point.

23 Q Okay. Do you know if they installed a  
24 groundwater extraction system at impoundment 317?

09:40AM 25 A I believe -- I don't know about the extraction

1 system. I believe they put in a monitoring system.

2 Q Okay.

3 A But it was probably after I had been off the  
4 project.

09:40AM 5 Q Do you remember -- do you know when Whittaker  
6 installed groundwater monitoring wells, the first time they  
7 installed groundwater monitoring wells at the site?

8 A I can't say exactly right now.

9 Q Do you know if the first wells that were  
09:40AM 10 installed were in connection with 317 in 1987?

11 A I couldn't say exactly. Probably.

12 Q Do you know when -- I'm sorry, sir. Were you  
13 going to finish?

14 A I would probably change that to more than  
09:40AM 15 possibly because I don't have a real sharp recall on exactly  
16 when they did what.

17 MR. GALLAGHER: Just give me a minute, sir.  
18 Thank you.

19 Q Now, your last involvement in the site was what  
09:41AM 20 year?

21 A What do you mean by "involvement"?

22 Q Direct -- as a staffer for RCRA.

23 A I believe I was promoted to supervision in 1993.

24 Q And was another -- sorry.

09:42AM 25 A So maybe, you know, that was my last time I was

1 involved as a staff person there.

2 Q And following your reassignment to supervisor,  
3 were you ever involved with the site again?

4 A I can't recall exactly, but it might have been  
09:42AM 5 given to one of my -- the staff that was working for me at the  
6 time.

7 MR. GALLAGHER: One moment. One moment.

8 Thank you, Mr. Sorsher. Nothing further.

9 THE COURT: Any redirect?

09:43AM 10 MR. RICHARD: Yes, Your Honor. Very briefly.  
11 Two points.

12 **REDIRECT EXAMINATION**

13 BY MR. RICHARD:

14 Q Mr. Sorsher, you were asked a couple times about  
09:43AM 15 your last involvement with the site. Do you recall preparing  
16 comments on a memo regarding the site at some point in 1992 or  
17 1993?

18 A Yes. I do.

19 Q And at the time you prepared that memo, did you  
09:43AM 20 have a view as to whether Whittaker could have reported all of  
21 the SWMUs at the site earlier than they did?

22 MR. GALLAGHER: Your Honor, objection. Outside  
23 the scope.

24 THE COURT: Sustained.

09:44AM 25 Q BY MR. RICHARD: Was writing your memo your last

1 involvement, sir?

2 A It could have been. I really don't recall. It  
3 was so many years ago.

4 MR. RICHARD: With that foundation, Your Honor,  
09:44AM 5 may I ask the question again?

6 THE COURT: You may not. The question that I  
7 ruled was outside the scope. It's still outside the scope.

8 MR. RICHARD: Okay, Your Honor.

9 Q Second area I wanted to ask you about real  
09:44AM 10 quickly, sir, I want to be real clear on this point. You were  
11 just asked a question by counsel about the date RCRA came to be  
12 as a law. Does the date RCRA came to be as a law have anything  
13 to do with your view that Whittaker failed to tell you and the  
14 EPA in August 1988 about hazardous substances in numerous  
09:44AM 15 landfills at their site?

16 MR. GALLAGHER: Objection, Your Honor. Outside  
17 the scope.

18 THE COURT: Sustained.

19 Q BY MR. RICHARD: Counsel just asked you --

09:45AM 20 THE COURT: Not just on that ground.

21 MR. RICHARD: Okay. In that case, Your Honor, I  
22 have no further questions.

23 I want to thank Mr. Sorsher for taking the time  
24 to appear here. Thank you, Mr. Sorsher.

09:45AM 25 THE COURT: Let's go ahead and have your next

1 witness, please.

2 MR. GEE: Your Honor, plaintiffs would like to  
3 call Keith Abercrombie.

4 THE COURT: Very well.

09:45AM 5 MR. BLUM: Your Honor, this will be my witness.

6 THE COURT: Thank you.

7 THE CLERK: Good morning, sir. Would you please  
8 come forward.

9 Good morning, sir. Please raise your right hand.

09:46AM 10 Do you solemnly swear that the testimony you  
11 shall give in the cause now before this Court shall be the  
12 truth, the whole truth, and nothing but the truth, so help you  
13 God?

14 THE WITNESS: I do.

09:46AM 15 THE CLERK: Thank you. Please be seated.

16 Sir, for the record, would you please state your  
17 name and then spell your last name.

18 THE WITNESS: Keith Abercrombie,  
19 A-b-e-r-c-r-o-m-b-i-e.

09:46AM 20 THE CLERK: Thank you.

21 There is some fresh water there if you need it.

22 THE COURT: Mr. Abercrombie, if you would please  
23 remove your mask, make sure that you're speaking into the  
24 microphone, as counsel likely advised you, as I am doing now,  
09:47AM 25 please.



1 You may proceed.

2 KEITH ABERCROMBIE,

3 CALLED BY THE PLAINTIFF, WAS SWORN.

4 DIRECT EXAMINATION

09:47AM 5 BY MR. GEE:

6 Q Mr. Abercrombie, where do you work?

7 A I work for Santa Clarita Valley Water Agency, or  
8 SCV Water for short.

9 Q What is your current position?

09:47AM 10 A I'm the Chief Operating Officer.

11 Q Can you please describe your duties as Chief  
12 Operating Officer of Santa Clarita Valley Water? Perhaps give  
13 us an example of the type of issues that you deal with on a  
14 daily basis.

09:47AM 15 A Sure. As Chief Operating Officer, I have overall  
16 responsibilities for what we would call our treatment, our  
17 distribution, our operations, our maintenance sections. This  
18 would also include sections that are responsible for safety.  
19 It would include a water quality laboratory and field water  
09:48AM 20 quality services. And in general, that section is responsible  
21 for producing, treating, and delivering the water throughout  
22 our distribution system to our customers.

23 Q And how long have you been Chief Operating  
24 Officer for Santa Clarita Valley Water?

09:48AM 25 A I have been the Chief Operating Officer at

1 SCV Water since January of 2018.

2 Q And what did you do before that?

3 A Prior to that -- immediately prior to that, I was  
4 the retail manager for the Santa Clarita Water Division. And  
09:48AM 5 prior to that, I was -- I had several roles at Valencia Water  
6 Company, the last role there being the general manager.

7 Q And how long were you the general manager of  
8 Valencia Water Company?

9 A I believe three or four years.

09:49AM 10 Q And what was -- what were some of your  
11 responsibilities with Valencia Water Company?

12 A Initially, my responsibilities were similar to my  
13 responsibilities now. I started out as vice president of  
14 operations. So I was in charge of the operations side of the  
09:49AM 15 company, all the -- all the tanks and facilities and the crews  
16 that maintained those.

17 As general manager, I had overall  
18 responsibilities for that but also for our customer service  
19 section, the people that deal with the customers on a  
09:49AM 20 day-to-day basis and process the ins and outs, the invoices and  
21 the monthly bills and so forth, as well as our accounting  
22 section that works on things such as rate cases and budgets and  
23 whatnot.

24 So generally all of the operation had some  
09:49AM 25 ability to be responsible for and oversee.

1           Q           And as your -- in your positions as general  
2 managers of the various agencies, did you have  
3 responsibilities -- or did you have any knowledge of the water  
4 sources that supplied Valencia Water Company's customers?

09:50AM

5           A           Yes. We -- you know, in my responsibilities,  
6 whether it was the GM or whether it was in our -- the  
7 operations, the vice president of operations, I was responsible  
8 for understanding our facilities that produced water, where it  
9 produced water from, what those sources were and how we moved  
10 that water around our system to customers.

09:50AM

11           Q           And did the -- any responsibilities as general  
12 manager and vice president, was there any reason that -- did  
13 you have any familiarity as to how much each of those different  
14 water sources cost?

09:50AM

15           A           Sure. We would -- I was involved in a number of  
16 rate cases, if you will. These are processes by which water  
17 utilities evaluate and analyze all of their costs. And this  
18 would include the cost of water that we produce or purchase and  
19 sell to customers, as well as all of our other costs of  
20 operation.

09:51AM

21                       And then those rate cases would take all of that  
22 information and present it to whoever our regulating authority  
23 was. At Valencia, it was the Public Utilities Commission, and  
24 that would go through a process for their review in setting  
25 rates that would be the rates we would charge our customers for

09:51AM

1 some period of time.

2 Q And, Mr. Abercrombie, did you at any time during  
3 your work at Valencia Water Company or Santa Clarita Valley  
4 Water Agency have an opportunity to act as a project manager  
09:51AM 5 for any treatment facilities?

6 A Yes, for treatment facilities and for all sorts  
7 of capital improvement projects. In particular -- excuse me.  
8 In particular, at Valencia Water Company, I was directly  
9 responsible for the installation of our first perchlorate  
09:52AM 10 removal facility at the well we call Well Q2.

11 But beyond that, we had numerous other capital  
12 improvement projects that I was involved in in managing the  
13 process from start to finish. These would be things such as  
14 tanks and booster stations, pipelines, other facilities.

09:52AM 15 Q And, Mr. Abercrombie, can you briefly describe  
16 your educational background?

17 A Sure. I have a Bachelor of Science degree from  
18 Colorado State University. I have a Master's of Business  
19 Administration from Santa Clara University.

09:52AM 20 Q And do you hold any certificates related to water  
21 management?

22 A Yes. There are generally two lines of  
23 certification that water utility workers and operators have.  
24 These are called distribution certificates or treatment  
09:53AM 25 certifications. I hold a distribution certification Level 5

1 and a treatment certification Level 2. These are administered  
2 by the State Water Resources Control Board.

3 Q And can you tell us what is -- what your  
4 certification in water management entails?

09:53AM 5 A Well, the certifications essentially -- you know,  
6 there's a requirement from the state to have certifications to  
7 be employed by water agencies. And depending on the agency,  
8 depending on what your role is in the agency, depending on the  
9 number of facilities that agencies have dictates the sort of  
09:54AM 10 standards for the levels of certifications that employees hold.  
11 These certifications require testing. They require periodic,  
12 like, every two- or three-year renewals that you have to go  
13 through by sort of continuing education credits, if you will.

14 These -- the goal of these systems or these  
09:54AM 15 certifications is to have people that have some level of  
16 understanding of the various things that we are involved in as  
17 a water agency, whether it be distribution systems and how they  
18 work and how you maintain them, whether it be treatment plants  
19 and how they work and how they're operated and maintained. But  
09:54AM 20 that's the gist for the rationale for those certifications.

21 Q Mr. Abercrombie, can you tell us a little bit  
22 about Santa Clarita Valley Water's -- what Santa Clarita  
23 Valley Water does?

24 A Sure. I would call us a full-service water  
09:55AM 25 agency. We are a water agency that provides water to

1 customers. We produce the water from either groundwater wells  
2 or through imported water that's purchased. It runs through a  
3 myriad of facilities to treatment plants, treat the imported  
4 water. We have a number of groundwater wells, tanks, booster  
09:55AM 5 stations, all sorts of pipelines and things that allow us to  
6 move that water around the valley to our customers.

7 We're responsible for managing that system, for  
8 providing that water, you know, in a safe and reliable manner  
9 to our customers. We are responsible for figuring out what all  
09:56AM 10 that costs and making sure we adequately recoup the costs  
11 necessary to operate the system but don't charge a penny more  
12 than we need to.

13 And so maybe I got off track, Counselor.

14 Q How long has Santa Clarita Valley Water Agency  
09:56AM 15 been in existence?

16 A Sure. Santa Clarita Valley Water Agency was  
17 created, I believe, January 1st, 2018. It was an act of the  
18 state legislature. That may sound funny to some because it's  
19 like the Santa Clarita Valley existed prior to January 2018.  
09:57AM 20 So obviously people were getting water and so forth prior to us  
21 being formed. But we were formed as a combination or a merger  
22 of the various utilities, water utilities that were there prior  
23 to January 1, 2018.

24 In particular, there were three water retailers,  
09:57AM 25 Newell County Water District, Santa Clarita Water Division, and

1 Valencia Water Company. There was one what we call a  
2 wholesaler, which was a utility that was a member of the State  
3 Water Project, and it purchased State Water Project water and  
4 treated that and delivered it to the retailers who delivered it  
09:57AM 5 to the customers.

6 So those four entities were serving water prior  
7 to January of 2018 to the valley. And at the point in time  
8 that SCV Water was formed, those four entities became  
9 SCV Water.

09:58AM 10 Q And as a result of the merger, were there many  
11 organizational changes at SCV Water?

12 A There were -- they were all organizational  
13 changes because there was no SCV Water prior to that.  
14 Essentially, you had four organizational charts with people  
09:58AM 15 holding all the roles necessary to run all those water  
16 utilities.

17 SCV Water became a new entity with its own  
18 organizational chart. So the people from the various  
19 predecessor agencies found their slots on that organizational  
09:58AM 20 chart, if you will.

21 So essentially, you had no employee who was like  
22 a long-time employee who knew everything about all aspects of  
23 the company, meaning all aspects of what was Newell County  
24 Water District or all aspects of what was Santa Clarita Water  
09:59AM 25 Division. You had employees who had experience with one

1 company or it may be two. In some cases, it may be three. But  
2 I don't think we found anyone who was in all four entities to  
3 date.

09:59AM 4 Q And as of today, is -- are the legacy water  
5 agencies, which I will call the former water agencies, legacy  
6 water agencies, have they been fully integrated into a single  
7 agency at this point?

09:59AM 8 A Well, on January 1 on paper we were fully  
9 integrated. We have since been -- taken significant strides to  
10 integrate those four separate entities into one agency. We  
11 have completed recently a process to sort of integrate the  
12 rates because you can imagine that, prior to January of 2018,  
13 each -- each water company had their own water rates, had their  
14 own ways of doing things. So we set through a process to  
10:00AM 15 create uniform rates across the valley.

16 We have implemented systems so that our  
17 accounting systems, our financial systems, our administration  
18 sort of functions and systems have been integrated to be sort  
19 of one system that we're all using.

10:00AM 20 Certain aspects of the former agencies, such as  
21 the distribution systems, the facilities, the wells, the tanks,  
22 the pipelines, those are largely still unconsolidated because  
23 of how they were initially built. It's not as easy as just  
24 saying now it's all connected as one.

10:00AM 25 We are taking strides to make some of those



1 connections and try to integrate those systems. But to date,  
2 those pieces of the system are still largely similar to how  
3 they were prior to the formation of SCV Water.

10:01AM 4 Q Okay. To use a term that is commonly used now,  
5 you're saying that the infrastructure has not been fully  
6 integrated; is that correct?

7 A That's correct.

8 Q Has SCV Water wells been impacted by  
9 contamination?

10:01AM 10 A Yes. We have had a number of wells impacted by  
11 contamination over the years.

12 Q And of the legacy water agencies, which of the  
13 legacy water agencies has been most impacted by contamination  
14 from the Whittaker site?

10:01AM 15 A I would say probably what was Valencia Water  
16 Company would be the most impacted, followed by Santa Clarita  
17 Water Company. The Valencia, if I recall correctly, has had  
18 maybe -- initially had -- let me see. Initially had one well  
19 and now have three Saugus wells that are impacted, have had  
10:02AM 20 alluvial wells impacted. And Santa Clarita has had similar but  
21 a few less over time.

22 Q And so because the infrastructure has not been  
23 integrated, is it true that you can't use, for instance, Newell  
24 County Water District water systems to make up the -- to make  
10:02AM 25 up the lost water capacity for, for instance, Valencia Water

1 Company?

2 MR. BLUM: Objection, Your Honor. Leading.

3 THE COURT: Sustained.

10:02AM 4 Q BY MR. GEE: Can the water sources from one of  
5 the legacy water agencies supply water to another water  
6 agency's distribution system?

7 A In some cases, yes. We do have the ability for  
8 some emergency interconnections that we have had in existence  
9 for years to be able to try to move water from one place to  
10:03AM 10 another. That isn't a -- the way the systems work, they're not  
11 just one system for a water company and another system for  
12 another water company. Each water company -- each water  
13 company's system is divided into multiple systems, if you will.  
14 And those systems, while they're interconnected, they're not  
10:03AM 15 interconnected to the point that you can move water from this  
16 point to that point all the time.

17 Q Okay. I'd like to talk a little bit about  
18 Santa Clarita Valley Water Agency's water supply. What are  
19 Santa Clarita Valley Water Agency's primary sources of water  
10:04AM 20 supply?

21 A Sure. We primarily have two sources of water  
22 supply, one being what I would call groundwater, the other  
23 being what we would call surface water or imported State Water  
24 Project water.

10:04AM 25 Q Okay. And of the groundwater sources, do you

1 draw water just from a single water source?

2 A No. In the Santa Clarita Valley, our groundwater  
3 is defined as existing in two aquifers, one being what we call  
4 the alluvium or the alluvial aquifer and the other being what's  
10:04AM 5 known as the Saugus formation. The alluvial aquifer is a  
6 shallower aquifer that lies above the Saugus formation  
7 generally. And the Saugus formation, therefore, is deeper and  
8 also much larger in depth than the alluvium.

9 Q And for the people that don't know what an  
10:05AM 10 aquifer is, can you explain what an aquifer is?

11 A Yeah. I think I heard someone mention this  
12 yesterday maybe that the -- the way of thinking about an  
13 aquifer is to sort of think of it as a -- as a lake or  
14 something, but it's underground. And so obviously, underground  
10:05AM 15 is full of rocks and sand and all of that. But within that is  
16 water.

17 So an aquifer is sort of layers -- layers of sand  
18 and gravel and so forth underground that contain water. And  
19 you define multiple -- you have different aquifers by the fact  
10:05AM 20 that you have layers of clay and other things that separate the  
21 aquifers. So, you know, if you just had sand from the surface  
22 down 5,000 feet, you might call that one aquifer because it's  
23 just one thing. But in this case, we just have two aquifers  
24 with the shallower one being the alluvium and the deeper one  
10:06AM 25 being the Saugus.

1 Water in aquifers typically moves. It's not  
2 generally stagnant, as in sitting in one place forever. It  
3 moves in a certain direction at different rates. And as a rule  
4 of thumb, you could say that the shallower alluvium aquifer  
10:06AM 5 moves a little bit faster than the deeper Saugus aquifer.

6 Q Okay.

7 MR. GEE: Next, I'd like to introduce Exhibit  
8 489, which has been stipulated, which is the 2010 Urban Water  
9 Management Plan.

10:07AM 10 (Marked for identification and received  
11 into evidence Exhibit No. 489.)

12 Q BY MR. GEE: Mr. Abercrombie, do you recognize  
13 this document?

14 A Yes, I do.

10:07AM 15 Q And what exactly is an Urban Water Management  
16 Plan?

17 A An Urban Water Management Plan is a document.  
18 It's a requirement that agencies, water companies, et cetera,  
19 across the state prepare. And I believe it's on a five-year  
10:07AM 20 basis, that every five years you prepare one of these plans.

21 It's a very complicated and in-depth plan that  
22 looks at the water that you have available to you, your water  
23 sources, for instance, how you get your water, how you manage  
24 that water supply. It looks at the demands that your customers  
10:07AM 25 have, you know, how much water do your customers use. It looks

1 at water quality issues related to the water that you have  
2 available to you or any potential threats or disruptions to  
3 supplies based on water quality.

10:08AM 4 It looks at potential conservation targets and  
5 needs and programs that you would implement should you have a  
6 drought or you need to implement some sort of conservation  
7 activity. And probably a bunch of other things. Like I said,  
8 it's a very thick document, but it's prepared for the public  
9 and published every five years.

10:08AM 10 Q And when you say it's prepared for the public,  
11 how would the public go about accessing this plan?

12 A Well, the plan itself goes through a long process  
13 of preparation, including a number of workshops that are open  
14 to the public. The public has opportunities to sort of get  
10:08AM 15 bite sizes. As these chapters are done, it's reviewed and so  
16 forth as opposed to letting you review a 700-page document all  
17 at once.

18 So the public has the opportunity to go to  
19 workshops, to hear about the plan, to provide input and public  
10:09AM 20 comment on the plan. The public also has the opportunity to  
21 object to the plan when they find something they don't like in  
22 it. And I recall an instance at one point --

23 MR. BLUM: Objection, Your Honor. Beyond the  
24 scope.

10:09AM 25 THE COURT: Well, it's nonresponsive at this

1 point. Yes, sustained at this point.

2 Q BY MR. GEE: Okay. And you mentioned earlier  
3 that the plan includes discussions about threats to the water  
4 supply. Would one of those threats be contamination?

10:09AM 5 A Yes.

6 Q And has the Urban Water Management Plan always  
7 addressed contamination?

8 A No. Not adequately.

9 Q And how did that -- was that a subject of a  
10:10AM 10 challenge by the public?

11 A Yes. There was -- I think it was -- I think it  
12 was the 2000 Urban Water Management Plan was challenged by a  
13 local public organization, I think the Friends of the  
14 Santa Clara River, because they didn't think it was adequately  
10:10AM 15 addressing some of the contamination occurring in the valley.

16 Q And how did the water agencies respond to that  
17 suit?

18 A You know, we reviewed the plan. Modifications  
19 were made to add what needed to be added to adequately address  
10:10AM 20 what the Courts felt weren't being -- wasn't being addressed.

21 Q Thank you.

22 Next line of questioning I have is, you know, I'd  
23 like to understand how contamination impacts Santa Clarita  
24 Valley Water Agency supplies. But before we get to specifics,  
10:11AM 25 can you tell us generally how contamination impacts the

1 agency's water supplies?

2 A Sure. As a water provider, we have a goal to  
3 provide a reliable supply of high quality water to our  
4 customers. We have a population of about 300,000 that we  
10:11AM 5 serve. Anytime a well, for instance, would be contaminated, we  
6 would have to do something to take that well off of service so  
7 that we can maintain providing a reliable supply of water to  
8 our customers.

9 Q When you have to take a water well -- that's not  
10:12AM 10 very easy to say. When you have to take a water well out of  
11 service, how do you address the loss capacity associated with  
12 that well?

13 A Typically a well is taken out of service if we  
14 have a contamination event. We have notified our regulators of  
10:12AM 15 that and keep them in the loop. And if -- and the production,  
16 the volume of water that we would typically get from that well  
17 would be replaced by purchasing imported State Water.

18 Q And how does contamination impact the water  
19 quality associated with the water served by the agency?

10:12AM 20 A Well, as I said, we don't serve the water from a  
21 well that has exceeded regulatory limits. If we did, that  
22 would obviously negatively impact the water quality we would be  
23 serving our customers. What we have to do is take the well out  
24 of service to be able to continue maintaining the quality of  
10:13AM 25 water we want to deliver to our customers.

1 Q And how does SCV Water know whether a well is  
2 contaminated?

3 A Well, both the federal -- the EPA and the state  
4 require water utilities, including SCV Water, to sample sources  
10:13AM 5 of supply and sources of supply in this case being wells. And  
6 we're required to take a multitude of samples on a regular  
7 basis all year long. And these thousands of samples are  
8 analyzed at laboratories, and the results are determined and  
9 monitored. And that's how we maintain the water quality in the  
10:14AM 10 wells.

11 Q I'd like to introduce Exhibit No. 89, which has  
12 been stipulated, which is entitled "The 2019 Water Quality  
13 Report."

14 (Marked for identification and received  
10:14AM 15 into evidence Exhibit No. 89.)

16 Q BY MR. GEE: Mr. Abercrombie, do you recognize  
17 this document?

18 A Yes, I do.

19 Q What is the purpose of this document?

10:14AM 20 A We publish a water quality report like this every  
21 year. This is a document that we publish for our customers.  
22 It's published in print and used to be in the past only print,  
23 and now it's electronic and/or print. But essentially, this is  
24 provided to each customer.

10:14AM 25 It gives the customer a snapshot of the water



1 quality throughout the year. It highlights various  
2 constituents in the water, what height, what samples might have  
3 been taken that were -- showed some result or didn't show  
4 results. And it provides the customers with text, you know,  
10:15AM 5 writing, if you will, in the report that explains things going  
6 on, such as contamination issues that they would have been  
7 reading in the news and so forth. And this report attempts to  
8 answer questions and provide information to our customers about  
9 their water quality.

10:15AM 10 Q Do you have any idea as to how many water quality  
11 analyses are run by Santa Clarita Valley in preparation of this  
12 report?

13 A Well, I think typically we -- we take over, you  
14 know, tens of thousands, 20,000-plus water quality samples.  
10:16AM 15 It's sort of an ongoing, everyday, all-the-time thing that's  
16 done throughout the year.

17 Q Okay. I'd like to introduce Exhibit 158, which  
18 has been stipulated by the parties.

19 (Marked for identification and received  
10:16AM 20 into evidence Exhibit No. 158.)

21 Q BY MR. GEE: Mr. Abercrombie, you indicated  
22 that -- you mentioned that Whittaker Corporation contamination  
23 has impacted some of the Santa Clarita Valley Water wells. Can  
24 you describe to us which wells have been impacted?

10:16AM 25 A Sure.

1 MR. BLUM: Your Honor, this is beyond the scope,  
2 and he's also not an expert.

3 THE COURT: Overruled.

4 You can answer.

10:16AM 5 THE WITNESS: Sure. The map that I'm looking at  
6 will depict the wells. It shows an outline of the Whittaker  
7 site and it depicts a number of wells. The first two closest  
8 to the Whittaker site would be called the Saugus 1 and the  
9 Saugus 2 wells. Well 157 farther west would be another one

10:17AM 10 that's been impacted. V-201, V-205, again farther west. And  
11 then there's two to the north of Q2 and the Stadium well.  
12 There's also a couple wells to the south, NC-11 and NC-13.

13 Q BY MR. GEE: Okay. Do you know how -- let me ask  
14 a foundation question.

10:17AM 15 Is V-157 a Valencia Water well under the old  
16 legacy system?

17 A Yes.

18 Q And do you know what happened to that well?

19 A Yes. That well was destroyed or -- they say  
10:17AM 20 destroyed. What it means is that you properly seal and abandon  
21 the well so that it's taken out of service forever.

22 Q Okay. And were there any other wells that were  
23 destroyed that were the subject of contamination?

24 A Yes. The Stadium well on the right-hand side.  
10:18AM 25 That one was also.

1 Q Do you know why those wells were destroyed?

2 A Yes. The initial -- there was initial testing  
3 done in the late '90s for perchlorate at the division of  
4 drinking water or at their predecessor agency's request. The  
10:18AM 5 initial round of testing and sampling of wells found  
6 perchlorate in a number of wells, including those two.

7 Q Okay. Now, so far we have seen wells as being  
8 dots on a map. Can you pull up Exhibit 471, which is a  
9 stipulated exhibit?

10:18AM 10 (Marked for identification and received  
11 into evidence Exhibit No. 471.)

12 Q BY MR. GEE: Mr. Abercrombie, do you recognize  
13 this photograph?

14 A Yes, I do.

10:19AM 15 Q Can you describe to me what this photograph is?

16 A This is a photograph taken at V-201. It's a well  
17 site we call V-201. This is within the well site itself. You  
18 know, most of our well sites are enclosed by either walls,  
19 fences, or -- et cetera, for security purposes. So we are  
10:19AM 20 inside the site and looking at a myriad of equipment at the  
21 Well V-201 facility.

22 Q I see some large pipes in the foreground.  
23 Approximately how large are those pipes?

24 A Those pipes are probably 12-inch diameter pipes.  
10:19AM 25 These wells are large production wells. Generally they produce

1 2,500 gallons a minute or so. It varies by well, obviously.  
2 But I guess to put that in perspective, that would be  
3 roughly -- for every hour that well would run, you would  
4 produce enough water for a single family household for a year.

10:20AM

5 Q Okay. And at some point in time -- at some point  
6 in time, did you learn that some of the drinking water's supply  
7 of wells were contaminated with perchlorate?

10:20AM

8 A Yes. I think it was in 1997. At that point in  
9 time, the EPA had come out with a revised testing methodology  
10 for perchlorate that allowed it to be tested down to lower  
11 levels. The division of drinking water or, again, their  
12 predecessor at the time had determined that there was potential  
13 for perchlorate contamination at facilities, near munitions  
14 facilities throughout the state. And they issued an order to  
15 water utilities to test for wells that were located near such  
16 facilities.

10:20AM

17 In our case in the Santa Clarita Valley, there  
18 were a number of wells that we were requested to take samples  
19 of for perchlorate. A number of those wells came back with  
20 detections of perchlorate. And that ties to some of that map  
21 that we had seen earlier.

10:21AM

22 Q Okay. And what did you do, if anything, to  
23 confirm whether or not the Whittaker site was the source of  
24 perchlorate?

10:21AM

25 MR. BLUM: Objection, Your Honor. Calls for a

1 narrative, and it's beyond his expertise.

2 THE COURT: Overruled.

3 He's asking what you and you personally know was  
4 done.

10:21AM 5 MR. BLUM: Then it's hearsay and no foundation.

6 THE COURT: The objection is overruled, Mr. Blum.

7 THE WITNESS: In about 1998, we, the purveyors,  
8 the water purveyors, had contracted with a groundwater  
9 hydrologist firm to try to determine if perchlorate was

10:22AM 10 possibly coming to the site during stormwater runoff events. A  
11 plan was put together. A rainfall runoff event was waited for.  
12 And then samples were collected to analyze that runoff, and  
13 perchlorate was detected in that water.

14 I think that answered your question, Counselor.

10:22AM 15 Q BY MR. GEE: Okay. And other than shutting down  
16 the wells and trying to confirm the source of the wells, are  
17 water agencies doing anything else in regards to perchlorate  
18 contamination?

19 A Sure. We hired a number of consultants and  
10:23AM 20 experts over the years to assist the water company with trying  
21 to -- particularly at that point in time to try to understand  
22 what do we do, how do we deal with this.

23 Perchlorate, again, was a new entity to most  
24 water utilities. It was only being discovered recently. This  
10:23AM 25 is back in the late '90s. And so we hired consultants to

1 assist us in trying to evaluate what our response could be, how  
2 we could remedy the situation.

3 Q And do you know the name of any of the  
4 consultants that assisted you in this process?

10:23AM 5 A Sure. We have used a consulting engineering firm  
6 known as Kennedy Jenks. We have had a couple of groundwater  
7 hydrologists involved over the years, Richard Slade &  
8 Associates and Luhdorff & Scalmanini and probably a bunch of  
9 others.

10:24AM 10 Q And did the consultants ultimately develop  
11 recommendations as to how to address the perchlorate  
12 contamination?

13 A Yes. The consultants, you know, looking at our  
14 initial findings in what was impacted had determined that a  
10:24AM 15 couple of the impacted wells could probably be used for  
16 containment wells, in other words, wells that could help  
17 contain the plume of perchlorate. In particular, this was  
18 Wells Saugus 1 and Saugus 2.

19 A number of other wells on that initial detection  
10:24AM 20 list were determined not to be useful for that. So those wells  
21 were ultimately destroyed. I mentioned earlier Stadium well  
22 and the Valencia 157.

23 Q You mentioned the term "containment well." What  
24 is a containment well?

10:25AM 25 A Well, in simplest terms, it would be a well that

1 is designed to try to capture a contaminant and keep it from  
2 moving somewhere else. So if you have this plume of  
3 contamination and an aquifer -- and again, the aquifers move --  
4 and you have a well somewhere that you can run to try to stop  
10:25AM 5 and contain and keep that contamination from moving to some  
6 other location.

7 Q And why was it important for the water companies  
8 to contain the contamination?

9 A Well, we were concerned because we had other  
10:25AM 10 wells. We had already lost a few wells based on this initial  
11 sampling and testing. We had other wells that were relatively  
12 close downgradient from the wells that had been impacted. And  
13 so we were concerned that we would have additional wells  
14 impacted.

10:26AM 15 Q Now, what was your role in implementing the  
16 remedy, if you will, to contain the contamination?

17 A Well, you know, in my role early on when I was at  
18 Valencia and we had the initial wells that I had indicated were  
19 sampled, some were destroyed -- I was involved in the work to,  
10:27AM 20 you know, destroy the Well 157. We also had short -- a few  
21 years after that, we had another well that was impacted,  
22 Well Q2, was heavily involved in the design and insulation of  
23 the treatment facility for that well.

24 Q And ultimately, you mentioned that the  
10:27AM 25 perchlorate contamination came from the Whittaker site. Did

1 you reach out to Whittaker regarding the contamination at any  
2 time?

10:27AM 3 A We did. I mean, we had, you know, meetings and  
4 discussions. We were trying to ascertain what was happening,  
5 where was this stuff coming from and so forth. And so a number  
6 of meetings were had.

7 I think early on the property -- we were told the  
8 property had been sold to a development or developer company --  
9 Santa Clarita, LLC, I believe -- and that they weren't  
10 responsible at that point in time.

11 Q And what was the purpose of meeting with -- the  
12 meetings with Whittaker?

13 A Well, the initial meetings, we were trying to  
14 determine who was responsible and figure out a way to deal with  
10:28AM 15 the problem.

16 Q And at any time did you ask Whittaker to address  
17 the contamination?

18 A We did. That led to legal issues and suits and  
19 things, but --

10:28AM 20 Q And are you generally familiar with the -- do you  
21 recall when abouts the suit that you mentioned was filed?

22 A I'm not sure when it was filed exactly. I mean,  
23 you know, the process started in the late, you know, '90s. We  
24 had sort of come to an agreement or a settlement by the 2007  
10:29AM 25 time frame. So it would have been filed somewhere in between.



1 THE COURT: Ladies and gentlemen, we are going to  
2 take our morning break. It is now 10:30. We will break until  
3 10:45.

4 Please remember, don't speak about the case or  
10:29AM 5 anything to do with it. Keep an open mind.

6 And do make sure that, for those of you in the  
7 gallery, that you continue to take your notebooks with you.

8 See you back here in 15 minutes.

9 (The following proceedings were held in  
10:30AM 10 open court outside the presence of the jury:)

11 THE COURT: Please be seated.

12 Mr. Gee, just a note and that is the Court has  
13 overruled the objections, and I stand on the Court's rulings.  
14 But you may just want to be mindful of the amount of time you  
10:30AM 15 have estimated to the Court and that the Court has given as to  
16 how much detail you want to go into things that may or may not  
17 be disputed.

18 I'm not pointing you in any direction. I'm  
19 simply asking you to be mindful of how much time you may want  
10:30AM 20 to spend on certain matters.

21 MR. RICHARD: Yes, Your Honor.

22 I forgot to ask -- and I don't think we  
23 discussed -- I need to move into evidence the exhibits I used  
24 with the witness even though they're stipulated. Does the  
10:31AM 25 Court prefer if we do it at the end of the day or with each

1 exhibit? I don't want to take up time with the witness.

2 THE COURT: We will proceed in this fashion,  
3 unless anyone has an objection to the procedure, and that is  
4 once a document has been published, it means it has been

10:31AM 5 received. And it should not be published until -- as the  
6 parties have been doing. The Court is aware it is a stipulated  
7 or unobjected to document.

8 Any objection to the procedure?

9 MR. RICHARD: That's perfect, Your Honor. Thank  
10:31AM 10 you.

11 THE COURT: Any objection, Mr. Blum?

12 MR. BLUM: No, Your Honor.

13 THE COURT: You will at the end of the day,  
14 however, have to sort of true up with my courtroom deputy. But  
10:31AM 15 as long as it has been published, that signifies it's been  
16 received.

17 MR. BLUM: I have a clarifying question, though,  
18 Your Honor.

19 THE COURT: Yes.

10:31AM 20 MR. BLUM: If a document has been stipulated to  
21 but it has not been officially published, does that mean it's  
22 not in?

23 THE COURT: Yes. Publication is the key to  
24 receive.

10:31AM 25 All right. We are in recess. Thank you.

1 (A recess was taken at 10:31 a.m.)

2 (The following proceedings were held in

3 open court in the presence of the jury:)

4 THE COURT: We are back on the record in the

10:50AM 5 trial matter with all present, including the jury, and the

6 witness has resumed the stand.

7 Mr. Abercrombie, you understand you remain under

8 oath?

9 THE WITNESS: Yes.

10:50AM 10 THE COURT: Is that a "yes"?

11 THE WITNESS: Yes.

12 THE COURT: You may continue with your direct.

13 Q BY MR. GEE: Mr. Abercrombie, you mentioned a

14 2007 settlement agreement. Are you generally familiar with

10:51AM 15 that settlement agreement?

16 A Yes. I have general familiarity with it.

17 Q And do you know what contaminants were addressed  
18 in that settlement agreement?

19 A Perchlorate primarily.

10:51AM 20 Q And are there other contaminants that -- from the  
21 Whittaker site that are of concern to Santa Clarita Valley  
22 Water Agency?

23 A Yes. In particular, the VOCs, PCE, and TCE.

24 Q And when did the water agency become aware that  
10:51AM 25 TCE and PCE were going to be an issue for the water agency?

1           A           Initially, when we were in the process of putting  
2   in the perchlorate treatment system for the Saugus 1 and  
3   Saugus 2 wells -- this was done in the mid 2000s, I guess, when  
4   the work was being done -- we had low levels at the time,  
10:52AM 5   detections of VOCs in those wells.

6                   We were under the impression, because they were  
7   below the MCL, that they wouldn't be a problem probably. And  
8   ultimately, in working through the permitting process with  
9   Division of Drinking Water to get our permit to put those wells  
10:52AM 10   back into service, we determined at their instruction that a  
11   system needed to be put in place to essentially blend the water  
12   to the point where you did not detect VOCs in the water being  
13   produced and distributed from those two wells.

14           Q           Mr. Abercrombie, are you familiar with the  
10:52AM 15   permitting process by DDW?

16           A           Yes. I mean, they have -- in this case, they  
17   have a process called 97-005. It's a process that the Division  
18   of Drinking Water uses when they're permitting a facility  
19   that's using water from what they determined to be a highly  
10:53AM 20   impaired water source.

21                   In this case, the water that the Saugus wells  
22   were producing was determined to be a highly impaired water  
23   source. And that permitting process is a long and rigorous  
24   process that the Division of Drinking Water goes through. We,  
10:53AM 25   at SCV Water, have provided numerous studies, data, whatnot to

1 the Division of Drinking Water as -- in compliance with their  
2 request pursuant to that permitting process.

3 Q And just for clarification, did you go through  
4 that process for the Saugus 1 and Saugus 2 wells?

10:53AM 5 A Yes, we did.

6 Q And did you ultimately get a permit for Saugus 1  
7 and Saugus 2?

8 A Yes. We ultimately got a permit from the  
9 Division of Drinking Water for those two wells. That permit  
10 requires us to effectively blend the treated water from those  
11 wells and have no detection of VOCs in our distribution system.  
12 And by "no detection," that means it needs to be below what  
13 they call the detection limit, which is about one-tenth of the  
14 MCL for those chemicals.

10:54AM 15 Q And, Mr. Abercrombie, how did the agency  
16 contemplate meeting the non-detect requirement in the -- in the  
17 turnouts?

18 A The system was basically designed to have the  
19 water that was treated for perchlorate or, in other words, the  
10:55AM 20 perchlorate was removed out of the treatment facility from  
21 those two wells. And then that water that was free of  
22 perchlorate was transported and blended into a distribution  
23 system that contained essentially imported State Water Project  
24 water. And that distribution system then fed that water  
10:55AM 25 throughout the system, through what's called turnouts.

1           Q           And, Mr. Abercrombie, you mentioned that you  
2 underwent some state certification on treatment plants. Are  
3 you familiar with typical treatment facilities for various  
4 contaminants?

10:55AM

5           A           Yes.

6           Q           And if you're not able to blend the VOCs down to  
7 below the detection limit, what other options do you have?

10:56AM

8           A           Well, essentially, the Division of Drinking Water  
9 has two scenarios for dealing with contaminants. In some  
10 cases, blending where you're taking water that's free of that  
11 contaminant and blending it with water with low levels of the  
12 contaminant is an option to result in the outcome being you  
13 don't find the chemical at a detection level.

10:56AM

14                   The other scenario would be that you treat for  
15 the contaminant. And essentially, that means that you're  
16 running the water through some sort of a treatment or  
17 filtration system that is actually removing the contaminant  
18 from the water.

10:56AM

19                   In this case, for VOCs, one of the primary means  
20 of treating is a process called granular -- using granular  
21 activated carbon, or GAC.

22           Q           And, Mr. Abercrombie, when did the agency start  
23 up Saugus 1 and Saugus 2 under the new permit?

10:56AM

24           A           I believe the wells were permitted and put into  
25 operation in or around 2010.

1 Q And does the agency meet with DDW periodically?

2 A Yes. We meet with DDW on a regular basis  
3 multiple times a year. And this is one of the -- on a lot of  
4 issues but including Saugus 1 and 2.

10:57AM 5 Q And when you've discussed Saugus 1 and 2, is the  
6 issue raised VOCs?

7 A Yes.

8 MR. BLUM: I apologize. Can I have the question  
9 read back or repeated?

10:57AM 10 THE COURT: Are you able to repeat the question?  
11 Thank you.

12 (The record was read.)

13 THE COURT: And the answer was "yes."

14 MR. BLUM: Thank you, Your Honor.

10:57AM 15 Q BY MR. GEE: What type of discussions have you  
16 had regarding the VOCs in Saugus 1 and Saugus 2?

17 MR. BLUM: Objection. It's vague and it calls  
18 for hearsay.

19 THE COURT: Sustained on vagueness grounds.

10:58AM 20 Q BY MR. GEE: Has DDW articulated a position on  
21 Saugus 1 and Saugus 2 VOCs?

22 MR. BLUM: Hearsay, Your Honor.

23 THE COURT: It's still vague. I don't think it's  
24 being offered for the truth of the matter, but I can't tell.

10:58AM 25 Q BY MR. GEE: Mr. Abercrombie, have you

1 participated in any of these discussions with the DDW?

2 A Yes, I have.

3 Q And to the best of your understanding, what --  
4 has DDW articulated their position in your presence as to how  
10:58AM 5 they expect -- as to how they expect the VOC noncompliance with  
6 a non-detect permit condition? What position has DDW taken in  
7 terms of requiring the agency to comply with that condition?

8 MR. BLUM: Your Honor, this is hearsay.

9 THE COURT: It's overruled.

10:59AM 10 Ladies and gentlemen, this is being offered to  
11 determine what action the agency took in connection with  
12 whatever they might have been told.

13 You may continue.

14 THE WITNESS: The Division of Drinking Water has  
10:59AM 15 made it clear to us that they expect us to comply with the  
16 permit. The permit says we are supposed to have non-detect of  
17 the -- of those constituents, PCE and TCE, at those sample  
18 points in our system.

19 Q BY MR. GEE: And has the agency taken any actions  
10:59AM 20 to try to get funding for such a remedy?

21 A We have. We have had discussions with DDW in  
22 that regard. And, in particular, they had offered up a  
23 potential source of, I believe, grant funding through what's  
24 called Proposition 1 that we did look into to try to determine  
11:00AM 25 if it was an option. Unfortunately, we weren't qualified for



1 that particular grant opportunity.

2 Q Okay. Moving along to same topic, permitting,  
3 for Well V-201 -- let's talk a little bit about V-201 first.

4 When did the agency learn that contamination from  
11:00AM 5 the Whittaker site impacted V-201?

6 A I believe our initial test results that detected  
7 perchlorate for V-201 were in late 2010.

8 Q And what was the agency's initial response?

9 A We took the well out of service, basically shut  
11:01AM 10 it down so that we wouldn't be serving the water. We informed  
11 DDW, you know, they get all the test results and so forth, and  
12 we informed them of our actions at the time.

13 Q Okay. And did you approach Whittaker about that  
14 contamination?

11:01AM 15 A We did.

16 Q What was the -- what -- to your recollection,  
17 what happened when you contacted Whittaker about that, the  
18 contamination?

19 A We went through the normal process of back and  
11:01AM 20 forth trying to get Whittaker to fund a treatment system for  
21 that process. Ultimately, we came together on sort of a  
22 separate agreement, if you will, of a V-201 agreement that  
23 addressed how the treatment system would be designed and  
24 installed and implemented for V-201.

11:02AM 25 Q And when did you come to an agreement with

1 Whittaker? What date?

2 A Many years after 2010 because, once we started  
3 building the facility, which wouldn't have happened until we  
4 had the agreement, you know, we were building the facility in  
11:02AM 5 probably 2016/'17 time frame.

6 MR. GEE: Your Honor, we'd like to present  
7 Exhibit 490-A, which is an exhibit that we had a ruling on the  
8 admissibility of.

9 (Marked for identification and received

11:03AM 10 into evidence Exhibit No. 490-A.)

11 THE COURT: Please proceed.

12 Q BY MR. GEE: Mr. Abercrombie, is this a copy of  
13 the agreement that you reached with Whittaker Corporation?

14 A It appears to be, yes.

11:03AM 15 Q And does the date of approximately July 2015  
16 refresh your recollection as to about when the parties  
17 ultimately entered into an agreement?

18 A Yes.

19 Q And so is it correct, if I'm doing my math right,  
11:04AM 20 that four years had transpired between the time the well was  
21 contaminated and agreement had been reached?

22 A That's about right, yes.

23 Q And once you reached an agreement with Whittaker  
24 on the funding of the V-201 treatment system, how much longer  
11:04AM 25 after that was the perchlorate treatment system installed?

1           A           I believe the system became active in mid to late  
2   2017. So the process was, you know, over that time period of  
3   installation and getting it activated.

11:04AM   4           Q           Okay. And is V-201 currently being used as a  
5   water supply well?

6           A           No. The treatment system, as I just said, was  
7   installed and made operational in late 2017. We don't have a  
8   permit yet, a drinking water permit, from the Division of  
9   Drinking Water that we need to allow us to use that well to  
11:05AM   10   deliver that treated water to customers as drinking water. We  
11   don't have that permit yet. So the well is not yet usable as a  
12   drinking water source.

13          Q           And is that the same 97-005 process that you  
14   earlier described for -- required for V-201? The permitting  
11:05AM   15   process.

16          A           Yes. It is the 97-005 process. I think the  
17   process is probably -- had some iterations or updates on the  
18   DDW site over the years. But it is the same process that  
19   essentially they used for us for the Saugus 1 and 2 wells.

11:05AM   20          Q           And when did you first start the permitting  
21   process for V-201?

22          A           I think we started talking in earnest to DDW  
23   about what would we need to do, how would we proceed in 2012 or  
24   so. You know, they provided directions, instructions. We  
11:06AM   25   started putting together the application process, which is,

1 again, a very complicated, complex large document. I believe  
2 the initial submission of that to DDW was in 2014.

3 Q So 2012, that's nine years ago. Does it normally  
4 take nine years to get a water supply permit?

11:06AM

5 A Well, one of my -- one of the people on my staff,  
6 Michael Alvord, is the person that's working directly with DDW  
7 on most of the SCV Water permitting issues these days.

11:07AM

8 THE COURT: Perhaps we can defer this to him if  
9 he's going to testify. Is he going to be testifying,  
10 Mr. Alvord? I thought I saw him on the witness list. If so,  
11 let's move on to another subject, please.

12 MR. GEE: All right.

11:07AM

13 Q After the perchlorate treatment facility was  
14 installed in 2017, I believe, did the agency operate the V-201  
15 well?

11:07AM

16 A Yes. We began operation of the well, pumping the  
17 water from the well, running it through the treatment system.  
18 But since we didn't have a drinking water permit from the  
19 Division of Drinking Water, we had to discharge the treated  
20 water to the Santa Clara River, essentially.

21 Q And what was the purpose of operating the V-201  
22 well if you can't use it for drinking water?

11:08AM

23 A Well, the well -- the well is serving as a  
24 containment well to help contain the perchlorate plume, much  
25 like the Saugus 1 and 2 wells. Both Whittaker's

1 hydrogeologists and the agency's, SCV Water, had recommended it  
2 be operated that way.

3 Q And do you need a -- any kind of permit from the  
4 state to discharge the V-201 water?

11:08AM

5 A You do. Anytime you discharge water to, say, a  
6 river, for instance, you have to get a permit from the State  
7 Water Resource Control Board, essentially a waste discharge  
8 permit. That permit has, you know, whatever requirements in it  
9 that the state is going to make you follow to discharge the  
10 water.

11:08AM

11 Q And you mentioned you had to purchase some State  
12 Water Project water to -- for the purposes of disposing of the  
13 water. What -- why did the State require or what -- what was  
14 the purpose of buying that water? Was it to meet a permit  
15 condition?

11:09AM

16 A Yes. The waste discharge permit essentially has  
17 limits for certain constituents, minerals and things, that you  
18 can discharge into various reaches of the river, for instance.

11:09AM

19 And in our case, the constituents of concern were  
20 total dissolved solids and sulfates. So the water being  
21 produced from the well had higher levels of those minerals than  
22 we could discharge into the river.

11:09AM

23 So the only way to do that and to meet the  
24 requirement for lowering those levels would be to blend that  
25 water -- that well with other water. And so we blended the

1 water that was being produced from the well that was treated  
2 for perchlorate and had the perchlorate removed, and then we  
3 would blend it with imported water to be able to meet the  
4 discharged limitations as it went to the river.

11:10AM

5 Q And did the water agency discuss the blended  
6 water requirements with Whittaker?

7 A We did. We had -- you know, we have monthly  
8 meetings with Whittaker and the water agencies and a myriad of  
9 other entities. And the operations of Well 201 were a regular  
10 agenda item.

11:10AM

11 Q And at any time do you recall whether or not  
12 Whittaker objected to operating V-201 as a containment well?

13 A No. Again, as I said, I think we both agreed  
14 that it should be operated as such. The agreement we signed  
15 essentially says that.

11:10AM

16 Q Has there been any other well that has been  
17 impacted by contamination from the Whittaker site that has  
18 caused you to take it offline?

19 A Yes. There's a well that we call V-205 which is  
20 located near 201 but slightly downgradient from it. And that  
21 well has also had detections of perchlorate and VOCs and is  
22 offline. It does not have treatment yet for either perchlorate  
23 or VOCs.

11:11AM

24 Q Okay. And you mentioned that, when you take a  
25 well down, that you -- that you need to replace loss capacity

11:11AM

1 with State Water Project water; is that correct?

2 A Yes. That's correct.

3 Q And did you determine -- let me ask a foundation  
4 question.

11:12AM 5 Who pays for the State Water Project water that's  
6 being used for blending in replacement water?

7 A Well, initially, the water is, you know, being  
8 purchased and treated and distributed through our system to  
9 that well for blending by us, by SCV Water. You know,  
11:12AM 10 ultimately somebody else might pay for parts of it, as has been  
11 done in the past by Whittaker.

12 Q Okay. And speaking of -- speaking of the  
13 replacement water, has replacement water for V-201 been an  
14 issue prior to the restart of the well in 2017?

11:12AM 15 A Yes. We have -- the well has been out of  
16 service, as we said, since 2010 or whatnot and still out of  
17 service other than being treated and discharged to the river.

18 We had an agreement with Whittaker where they  
19 paid for the replacement water for a period of time, you know,  
11:13AM 20 from, I think, 2012 to 2017. That agreement ended at that  
21 point to where they didn't pay beyond that.

22 Q And was that part of the 2007 settlement  
23 agreement?

24 A No. That was part of what I would call the V-201  
11:13AM 25 agreement.

1 Q And currently, you mentioned that water is being  
2 purchased to enable you to dispose of V-201 output to the  
3 Santa Clara River. Who is paying for the water that you need  
4 to satisfy your discharge permit?

11:14AM

5 A We are. SCV Water.

6 Q And the replacement water since 2017 for V-201,  
7 who is paying for that?

8 A SCV Water.

11:14AM

9 Q What about -- is SCV Water incurring replacement  
10 water costs associated with V-205 being shut down?

11 A Yes. The well was taken offline. So the  
12 production that we would typically have gotten from that well,  
13 we can't get from that well any longer.

11:14AM

14 Q And did you make any type of assessment as to how  
15 much SCV Water is paying associated with the contamination from  
16 the Whittaker site?

17 A Well, I made assessments as to what that water  
18 was costing us as far as the replacement water, as far as the  
19 blend water.

11:15AM

20 Q I'd like to display Exhibit 491-A, which was  
21 discussed previously.

22 THE COURT: You do need, before you do so, to  
23 establish a foundation as to how this information was arrived  
24 at.

11:15AM

25 MR. GEE: All right.



1           Q           So, Mr. Abercrombie, in your job responsibility,  
2 do you know how much State Water Project water costs?

3           A           Yes.

4           Q           And in determining how much replacement water was  
11:16AM 5 required for V-201, how did you go about determining that --  
6 the volume of water that was required?

7           A           Sure. What we did was we looked -- I looked at  
8 the historical production from that well, V-201. We have  
9 production meters or meters, if you will, on all of our wells  
11:16AM 10 that meter the flow of water that that well produces. Those  
11 are read, compiled, and imported out on various bases, whether  
12 it be monthly, annually, whatnot.

13                       So I looked at the water that was produced from  
14 that well, the volume, and I'm using volume in terms of  
11:17AM 15 acre-feet. That's the way I calculate the volumes. It's a  
16 unit of measure that is about 325,000 gallons of water.

17                       I looked at the historical production from that  
18 well over a number of years. I think in this case a five- or  
19 six-year period up to the point in time that the well was shut  
11:17AM 20 down. And I averaged the annual production for those five or  
21 six years, and that gave me an annual number for the volume of  
22 water that that well had been producing on an average basis.

23           Q           Okay. And -- but the water that comes out of  
24 V-201, that's not free, is it? Don't you have to pay some  
11:17AM 25 costs in order to obtain the water out of V-201?

1           A           Well, sure. You're paying for electricity.  
2           You're paying for chemical costs because we do have to  
3           chlorinate the water that comes out of the wells. You also  
4           have your general operational expenses and whatnot that you  
11:18AM 5           incur as a water company producing that water.

6           Q           Okay. And was that number factored into your  
7           calculation as to replacement water costs?

8           A           Some of those numbers were. Essentially, the  
9           value of the water or the cost of the water, the cost of the  
11:18AM 10           imported water to the retail system that's delivering that  
11           water to those customers was calculated. And that can be done  
12           simply by looking at invoices that show, you know, what the  
13           cost is per acre foot for import water that's being delivered  
14           to, say, in this case, the Valencia system.

11:18AM 15                    To that, since imported water is coming into the  
16           system, it's essentially cheaper to pump imported water into a  
17           water system than it is to pump the groundwater into the water  
18           system because the imported water is already in a pipe, more or  
19           less at the top of the ground. And the groundwater is way  
11:19AM 20           below the ground.

21                    So there's a calculation that's done to  
22           determine, you know, how much energy savings is there by not  
23           having to pump the water from the well. And that is actually a  
24           credit or a reduction to what the cost of replacement water  
11:19AM 25           would be because we're not having to spend that money now to

1 pump that well out of the -- the water out of that well.

2 A similar calculation is done to analyze how much  
3 chlorine costs do we incur to chlorinate the water from the  
4 well and to convert that to an acre foot basis, if you will,  
11:19AM 5 because the water that's coming into the system, the  
6 replacement water, the imported water has already been treated  
7 and chlorinated. So we don't have to chlorinate it  
8 additionally.

9 So that's, again, another credit or reduction to  
11:20AM 10 the cost of the imported water. And, you know, those two  
11 credits, if you will, subtracted from the cost of the imported  
12 water to the system results in a net number of so many dollars  
13 per acre foot for imported water that's being used as part of  
14 the main part of the calculation for replacement water or  
11:20AM 15 blending water.

16 Q And you mentioned that the agency is also paying  
17 for water that you need to blend with V-201 discharge water to  
18 Santa Clara River. Do you have a way -- did you have a way of  
19 determining how much the agency is paying for that?

11:20AM 20 A Sure. It's more or less the same number. The  
21 cost of the imported water coming into the system is, again, a  
22 number that you can calculate from what the retail entity is  
23 paying for that water coming into that system.

24 THE COURT: I do have a question for you.

11:21AM 25 So with regard to the blending, did your agency

1 always use imported water as opposed to perhaps at times using  
2 the water that you have from wells that you could otherwise  
3 use? Do you understand the Court's question?

4 THE WITNESS: I think so, Your Honor. I mean,  
11:21AM 5 it's -- imported water is the only source that we have that is  
6 generally not subscribed -- fully subscribed as far as use at  
7 times of the year. So in other words, other wells that we have  
8 that we run, we run full time in the summer months, you know,  
9 from June to September. We don't have extra there. You know,  
11:21AM 10 it's a -- and we don't -- it's not -- the numbers, it's not  
11 like you -- well, let's take that water and use it in another  
12 month.

13 The demands are cyclical. So we have to blend it  
14 out. So in our view, the water we are using is by producing  
11:22AM 15 more imported water that we can increase from pumping from  
16 turnouts into the system.

17 THE COURT: The bottom line though is -- I  
18 understand there's a reason that you have just described for  
19 doing what you have done, but what you have done is you have  
11:22AM 20 imported water both for purposes of replacement and for  
21 blending.

22 THE WITNESS: Correct.

23 THE COURT: As opposed to using some other water  
24 source for those two purposes; is that right?

11:22AM 25 THE WITNESS: Well, that's correct because I

1 don't think we have the other --

2 THE COURT: I'm not questioning that at all.  
3 This is purely a clarifying question. Thank you. Please  
4 proceed.

11:22AM 5 Q BY MR. GEE: Okay. And, Mr. Abercrombie, you  
6 described a -- a methodology for calculating replacement water  
7 for V-201. Did you apply a similar methodology for Well V-205?

8 A Yes. The calculation is very similar for  
9 Well V-205. I believe there was some difference in the  
11:23AM 10 electrical credit, if you will, because V-205 is a larger  
11 motor, so it uses more electricity. So by not pumping it,  
12 there is a larger savings. So there is an actual little bit of  
13 a change in the -- or increase in the credit for V-205. Other  
14 than that, the calculations are very similar.

11:23AM 15 Q Okay. In making your overall calculation of  
16 costs incurred by Santa Clarita Valley Water Agency with  
17 respect to replacement water for V-201, what did you choose as  
18 being the time period for which you're incurring those costs?

19 A Well, for V-201 we knew we shut the well off in  
11:24AM 20 2010 or so. We recovered replacement water costs from  
21 Whittaker for 2012 to 2017. And at whatever month that  
22 ended -- I think it was November or December of 2017 -- from  
23 that point forward until today or November 1, I think is when I  
24 did the last iteration, would have represented the replacement  
11:24AM 25 water costs, the historical, if you will, uncovered replacement

1 water costs.

2 Q Okay. And for the blend water to discharge to  
3 the Santa Clara V-201 water to the Santa Clara River, did you  
4 use the same time period?

11:25AM

5 A No. Again, the blending -- the blend water was  
6 needed because of the fact that we were -- we had built the  
7 treatment system. We were removing the perchlorate, but we  
8 can't use the water yet. So we're having to discharge it to  
9 the river. So that started in late 2017 roughly when we were

11:25AM

10 able to activate the treatment plan. And so it would go from  
11 that point until I think late April of this year, and then at  
12 that point in time we shut the well down, and we did some  
13 maintenance on the vessels, the treatment vessels, if you will  
14 and so forth. And that hasn't been activated yet again.

11:25AM

15 Q All right. Did you do anything to summarize your  
16 calculations?

17 A I did. I prepared some -- I think a one-page  
18 recap, one for well 201, one for well 205. It showed the  
19 acre-feet that we calculated, the average volume of the well.

11:26AM

20 It showed what the cost per acre foot was for the imported  
21 water. It showed the credits as they applied for electricity  
22 and chemical treatment to give you a net cost for the  
23 replacement water. And then it multiplied -- you know, it  
24 converted the annual volumes of replacement water to whatever

11:26AM

25 the time periods were that we are talking about whether it be

1 2017 to current or whatnot. And then it applied that acre --  
2 dollar per acre foot value to come up with what a dollar cost  
3 was for replacement water for that particular period of time.

11:27AM 4 Q And so far have we discussed all the cost  
5 settlements that went into your calculation?

6 A I believe so. I mean, we did -- at one point we  
7 looked at -- you know, we looked at a forward-looking  
8 calculation knowing that, all right, if we need to put in  
9 treatment for VOCs, that starts, say, today, it's going to take  
11:27AM 10 us so many months or years to install that treatment and get it  
11 activated at whatever facility we are talking about, well 205  
12 or 201.

13 So during that period of time, we would be in the  
14 same place we are now with no permit, and we would still be  
11:28AM 15 needing replacement water, still be needing blend water. And  
16 so I had done a calculation to show what that sort of future  
17 period of time was.

18 MR. GEE: Okay. So for the past -- for the past  
19 well damages, Your Honor, may I display the summary sheet that  
11:28AM 20 was described in detail?

21 THE COURT: Yes.

22 Q BY MR. GEE: Mr. Abercrombie, is this the  
23 replacement water and blend water calculation -- I'm sorry.

24 MR. BLUM: Excuse me.

11:28AM 25 THE COURT: I didn't hear you.

1 MR. BLUM: Your Honor, I apologize. I'm sorry,  
2 Your Honor.

3 THE COURT: We had a discussion about this in  
4 your absence this morning.

11:28AM 5 MR. BLUM: I apologize, Your Honor.

6 THE COURT: And please make sure you are  
7 identifying for the record the exhibit that you're publishing.

8 MR. GEE: Your Honor, I'd like to introduce and  
9 submit Exhibit 492.1.

11:29AM 10 THE COURT: It will be received.

11 (Marked for identification and received  
12 into evidence Exhibit No. 492.1.)

13 Q BY MR. GEE: Mr. Abercrombie, is this a document  
14 prepared by you?

11:29AM 15 A Yes, it is.

16 Q And does it represent the elements of replacement  
17 of water costs that you had just previously described?

18 A It does. The top half of the document refers to  
19 replacement water. The bottom half, more or less, refers to  
11:29AM 20 blending water.

21 Q And so for the replacement water for V-201, how  
22 much costs has the agency incurred for the purposes of  
23 replacing lost capacity of V-201 since approximately 2017?

24 A Approximately 466,000.

11:30AM 25 Q Okay. Similarly, the bottom half of that -- this



1 exhibit shows or it says -- entitled blend water since  
2 February 22, 2018.

3 Did you prepare this calculation too?

4 A Yes, I did.

11:30AM 5 Q Did you prepare this -- was this calculation done  
6 using the method that you described for blend water --

7 A Yes.

8 Q -- costs?

9 A Yes, it was.

11:30AM 10 Q And what was the total blend water costs incurred  
11 by the water agency between February 22nd, 2018, and  
12 April 26, 2021?

13 A It would be just over \$2.9 million.

14 Q And I note that your calculation stops at  
11:31AM 15 April 26, 2021. Is there a purpose or is there a reason why  
16 you're not incurring costs?

17 A Yes. Because that is when we shut the well down  
18 to basically empty the treatment vessels for coding inspections  
19 and so forth. And so at that point we weren't producing --  
11:31AM 20 running the well and producing or needing to discharge water.

21 Q April 26 is about seven months ago. Is the  
22 maintenance complete on that well?

23 A Maintenance is complete. There were a number of  
24 components that needed to be replaced that apparently the  
11:32AM 25 pandemic has caused some delays in equipment that extended

1 things out. But we have, I would say, in the past month  
2 probably completed that work.

3 Q Okay. Is there a reason why V-201 blend -- V-201  
4 is not operating at this time?

11:32AM 5 A Yes. I mean, we have asked Whittaker to obtain  
6 replacement water. As you know, we're in a drought, a very  
7 severe drought this year and expected to be similar or worse  
8 next year. We have not received a positive response.

9 Q Is there a reason why you can't use State --  
11:32AM 10 purchase State Water for blending water purposes?

11 A Again, we're in a drought. If you can find it,  
12 you can use it. It is not always easy to locate import water  
13 during severe droughts as multiple agencies are competing for a  
14 fixed resource across the state.

11:33AM 15 Q Okay. So there's one last line item that you  
16 have down at the bottom. I believe you mentioned chemical  
17 costs. Does this line item represent the chemical costs that  
18 you were referring to earlier?

19 A No. This is really a separate matter. This is  
11:33AM 20 another one of the aftereffects or the results of having to  
21 discharge the water to the river is that, you know, the water  
22 that we're discharging to the river, at least the blending  
23 portion of it, is already chlorinated. You know, it's treated  
24 water. It's chlorinated, et cetera. And you can't discharge  
11:34AM 25 chlorine into the river. So we have to use, as part of the

1 discharge process into the river, we have to essentially do  
2 what they call dechlorinate the water which is we add a  
3 dechlorination chemical so that the chlorine dissipates before  
4 it gets to the river.

11:34AM 5 Q Okay. And you mentioned you used a similar  
6 calculation for Well V-205.

7 A That is correct.

8 MR. GEE: Your Honor, I'd like -- Your Honor, I'd  
9 like to display and enter a calculation sheet prepared by  
10 Mr. Abercrombie for replacement water for V-205. That was  
11 earlier discussed.

12 THE COURT: Yes. I'm aware. But I do need the  
13 exhibit number, please.

14 MR. GEE: I'm sorry.

11:35AM 15 THE COURT: Is it 493-A or some other exhibit?

16 MR. GEE: It's 494.

17 THE COURT: It will be received.

18 (Marked for identification and received  
19 into evidence Exhibit No. 494.)

11:35AM 20 Q BY MR. GEE: Mr. Abercrombie, did you prepare  
21 this exhibit that is marked 494.1?

22 A Yes, I did.

23 Q 494.1 document, did you use the same process for  
24 calculating replacement water as we earlier discussed?

11:35AM 25 A Yes, I did.

1 Q And what was the total amount of replacement  
2 water for -- associated with V-201 -- I'm sorry -- V-205?

3 A Just over 4.1 million.

4 Q All right. I'm done with this document.

11:36AM

5 Mr. Abercrombie, you mentioned that you also  
6 prepared some cost estimates associated with -- cost estimates  
7 for replacement blend water and water costs going forward.

11:36AM

8 What is the basis of -- why would you need -- how can you  
9 calculate costs going forward for replacement water? Perhaps  
10 we can talk about some of the assumptions that you made in that  
11 calculation.

12 Did you use a similar method to calculate  
13 replacement water going forward for -- and blend water going  
14 forward for V-201?

11:36AM

15 A Yes. I used the exact same method.

16 Q And why would the -- why would the agency --  
17 let's say that we started today. Why would the -- implementing  
18 a remedy for V-201, why would the agency need to purchase blend  
19 water and replacement water if we got approval to build the  
20 facilities to treat V-201 water?

11:37AM

21 A Well, I mean, at the point in time that we got a  
22 green light, we got approval to proceed with building the  
23 treatment system that would be needed to put the well under use  
24 and get a permit. That starts a process. I mean, you don't  
25 have a treatment plant tomorrow. You have to design it, you

11:37AM

1 know, lay it out, make sure it fits, have all the components  
2 engineered and put together. That takes a lot of time. And  
3 you have to also then start the process of specifying the  
4 specific types of equipment and vessels and pumps and motors,  
11:38AM 5 et cetera, that you would need, send that out for bids to the  
6 various contractors and suppliers, and that takes time.

7 And once that's all done, the process of the  
8 suppliers actually being able to deliver you equipment is also  
9 something that is -- has sometimes a long lead time on it.

11:38AM 10 Most of this equipment, especially the large vessels, are  
11 custom fabricated when you order them. They're not things that  
12 suppliers just have a thousand of these tanks sitting around  
13 their yard. And so there's time involved in that process to  
14 design it and to bid the equipment.

11:38AM 15 And then it takes time to build the facility.  
16 You're pouring foundations. You're installing piping,  
17 electrical conduit and electrical equipment, et cetera. So  
18 there's a lot of work that needs to be done to build the  
19 facilities.

11:39AM 20 Q Okay. Mr. Abercrombie, those are foregoing  
21 costs, costs that will be incurred in the future?

22 A Yes.

23 Q As a project engineer, basically project  
24 engineering experience, is there a formula that calculates what  
11:39AM 25 those -- what the future costs would be in today's dollars?

1           A           Yes. I guess I would just say two things. To be  
2 clear, I'm not an engineer. But essentially, you know, when  
3 you're looking at a future stream of money, whether it's being  
4 spent or coming in, you can apply a discount factor and  
11:40AM 5 discount that future stream back to some present day amount.  
6 In other words, if somebody were to give you that amount, it  
7 would be the same as if you got that future stream of money  
8 over the upcoming years.

9           Q           And is that a calculation commonly made by  
11:40AM 10 project managers?

11           A           It is. It's a -- I mean, a lot of people do  
12 that. It's a present value calculation that every calculator  
13 in all aspects of financial software have those functions in  
14 them to make those calculations.

11:40AM 15           Q           And did you undergo a similar process for  
16 Well V-205?

17           A           Yes. The same process.

18                   MR. GEE: Your Honor, I'd like to display and  
19 enter Exhibit 491-A that was discussed earlier.

11:41AM 20                   THE COURT: It will be received.

21                   (Marked for identification and received  
22 into evidence Exhibit No. 491-A.)

23           Q           BY MR. GEE: Mr. Abercrombie, did you prepare  
24 what is displayed here as Exhibit 491-A?

11:41AM 25           A           I did.

1 Q And is the calculation for replacement water  
2 which is, I believe, the top half of the page, is that -- was  
3 the replacement water costs consistent with the methodology  
4 that you just described?

11:41AM

5 A Yes, it was.

6 Q And for blend water costs that's in the middle  
7 section of the Exhibit 491-A, is that consistent with the  
8 calculation methodology that you described for blend water?

9 A Yes.

11:42AM

10 Q And what ultimate figure did you come up with for  
11 replacement water for water costs for V-201 between now and  
12 October 2023?

13 A The discounted number would be 200 -- just over  
14 \$233,000.

11:42AM

15 Q And for blend water, again, what was the total  
16 net present value costs that you derived using your methodology  
17 that you just described?

18 A 2.2 plus million.

19 Q And the other costs that you listed on there, are  
20 those the operating chemical and electricity costs that you  
21 earlier discussed?

11:43AM

22 A No. What we did discuss, dechlorination. But  
23 these aren't the electricity and chemical costs that I  
24 discussed earlier as far as being deductions for the cost of  
25 the replacement or blend water. These are additional

11:43AM

1 electrical costs, for instance, that we would have running the  
2 V-201 treatment system at the point in time that we can run it  
3 into the system because there's an additional booster station  
4 involved which ultimately results in more horsepower for the  
11:43AM 5 facility once it's producing water into the system than the  
6 facility requires when it's pumping to waste. So there is an  
7 incremental increase in electrical costs we will incur at that  
8 point in time.

9 MR. GEE: Okay. I would like to present and  
11:44AM 10 enter Exhibit 493-A, Your Honor, which is a document that we  
11 discussed earlier.

12 THE COURT: Yes. It will be received.

13 (Marked for identification and received  
14 into evidence Exhibit No. 493-A.)

11:44AM 15 Q BY MR. GEE: Mr. Abercrombie, did you prepare  
16 this figure in 493-A?

17 A Yes.

18 Q And the figure in 493-A, does this represent the  
19 well replacement water costs for Well V-205 through  
11:44AM 20 implementation?

21 A It does.

22 Q And what is the total discounted -- net present  
23 value costs that you anticipate the agency to incur through  
24 implementation of the treatment remedy?

11:44AM 25 A Just over \$1.4 million.



1           Q           Okay. I'd like to just touch briefly on a little  
2 bit about, you know, some of the foundational issues that are  
3 associated with these damages.

4                   You mentioned that the water that is currently at  
11:45AM 5 V-201 meets the MCLs or below the MCLs for drinking water.  
6 Isn't it true that, if it's below the MCL, you can just start  
7 using that water for drinking water supply?

8                   MR. BLUM: Leading.

9                   THE COURT: Overruled.

11:45AM 10                  You may answer.

11                  THE WITNESS: It isn't when you're dealing with a  
12 permitting process that DDW is using now called the 97-005  
13 process. And it's our understanding that that process, which  
14 they bring to bear on bodies of water that they determined to  
11:46AM 15 be -- shoot. I just lost the term -- highly impacted or highly  
16 impacted from severely impaired -- that's not the right term.

17                  Anyway, groundwater sources essentially are ones  
18 that are impacted by multiple contaminants. So they're located  
19 near facilities that have large numbers of contaminants that  
11:46AM 20 have impacted the soil or the groundwater. And the DDW looks  
21 at the risk of the -- adverse health risk to consumers or  
22 drinkers of that water as being much higher in those instances  
23 where there are multiple contaminants in the water. And this  
24 process they're using for permitting the 97-005 process is one  
11:47AM 25 wherein they want all of the contaminants that you have in the

1 water to be below the detection limit. So not to be found in  
2 the water that you're delivering to customers.

11:47AM 3 Q BY MR. GEE: Okay. Even a more fundamental  
4 question. In order to use V-201 water for drinking water, do  
5 you need a permit from the Department of Drinking Water?

6 A Yes. We absolutely do.

7 Q Okay. It is the department of -- does Valencia  
8 Water Company -- I'm sorry.

11:47AM 9 Does Santa Clarita Valley Water company make the  
10 ultimate determination as to what is healthy and unhealthy for  
11 consumers to drink?

12 A No. I mean, we aren't toxicologists or whatnot.  
13 I mean, we -- we look at the regulations put forth, and we do  
14 our best to comply with those regulations and standards that  
11:48AM 15 are provided to us because, by complying with that, we are in  
16 effect providing the best quality water we can to our  
17 customers.

18 MR. GEE: Mr. Abercrombie, I think I am finished  
19 with your examination. I appreciate your time. Counsel for  
11:48AM 20 Whittaker have an opportunity to ask some cross-examination  
21 questions.

22 THE COURT: All right. Cross-examination.

23 MR. BLUM: Thank you, Your Honor.

24 ///

11:48AM 25 ///

**CROSS-EXAMINATION**

BY MR. BLUM:

Q It's almost good afternoon, Mr. Abercrombie. How are you doing?

A Very well. Thank you.

Q I don't think I have seen you since your deposition. Things going well?

A Going well. Been well.

THE COURT: Mr. Blum, let's get down to the examination.

Q BY MR. BLUM: Sir, did I just hear you say that, because there's -- the water agency is not toxicologists, that the agency relies solely on the DDW to determine whether or not water is safe?

A I think so, yes. We rely on the regulations from the regulators to tell us how we -- what levels we need to be testing for and complying with.

Q Then why did the agency represent to the public in a press release a few years ago that the water coming from Well V-201 was safe to drink?

A We aren't bringing any water into the system for customers to drink from Well 201.

MR. BLUM: If we can see Exhibit 1347, please. I'm sorry. It's 1376. I got the wrong one.

///

1 (Marked for identification and received  
2 into evidence Exhibit No. 1376.)

3 Q BY MR. BLUM: Sir, do you see the information  
4 sheet on Well V-201 that's in front of you?

11:50AM

5 A I do.

6 Q What's the date of that, please?

7 A I guess it would be the date at the bottom of the  
8 page which is July 17 of 2018.

11:51AM

9 Q Do you recall a situation in which the water  
10 agency was cited for improper disposal and contravention of  
11 their MPDES permit for the water company from Well V-201?

12 A Yes.

13 Q And do you recall this press release being sent  
14 out and -- if you go to the second page, please -- one of the  
15 questions was, "Was there any danger to our water supply?"

11:51AM

16 Do you recall that?

17 A I do.

18 Q Can you read to the jury what the agency stated  
19 in terms of responding?

11:51AM

20 A It says, "No. These minerals are naturally  
21 occurring in local groundwater and are not related to the  
22 treatment process. The water could be served to homes for  
23 drinking but did not meet the standards for discharge to this  
24 reach of the river."

11:52AM

25 Q Well, based on the absence of toxicology and the

1 sole reliance on the DDW, what was the basis for the water  
2 agency telling the public that the water could be served to  
3 homes for drinking?

11:52AM 4 A Because the items that we were cited for for the  
5 MPDES permit, the levels of those items fall within the  
6 drinking water standards that we would have in our drinking  
7 water permits for our wells.

8 Q In other words, it was all below the MCLs.

11:52AM 9 A I don't know if some of those things even have  
10 MCLs, but it's below the regulatory limits for those  
11 constituents.

12 Q Well, also, that water had very, very low levels  
13 of VOCs in it, didn't it?

14 THE COURT: Mr. Blum, please.

11:52AM 15 Q BY MR. BLUM: The water had very low levels of  
16 VOCs in it, didn't it?

17 A It did.

18 Q But they were below the MCLs; right?

19 A Yes, they were.

11:53AM 20 Q And the water agency represented to the public  
21 that this water with low levels of MCLs could be served to  
22 homes for drinking, did it not?

11:53AM 23 A No, we didn't. This press release is addressing  
24 water that was dumped into the river, and we violated an MPDES  
25 permit. As such, none of that water was being delivered to

1 homeowners; so homeowners need not worry that their water is a  
2 problem because the water is going to the river.

11:53AM 3 Q Mr. Abercrombie, when the district represented  
4 that, quote, it could be served to homes, wasn't it telling the  
5 public that, regardless of where it went, this was -- this  
6 would have been safe water to drink if we had served it to the  
7 public?

11:54AM 8 A I think the statement is referring to the line  
9 above it which is addressing the minerals in question that were  
10 the subject of the violation.

11 Q And it had nothing to do or ignored the fact that  
12 it had VOCs below the MCLs. That was irrelevant?

13 A That was irrelevant for this press release  
14 dealing with this issue.

11:54AM 15 Q Have you ever told the public that, hey, the  
16 water coming from the turnouts could have low levels of VOCs in  
17 it and, danger, don't drink it?

11:54AM 18 A No, we haven't. The public is well aware that  
19 the water from the Saugus 1 and Saugus 2 treatment plant has  
20 VOCs, and that is not blended out 100 percent of the time.

21 Q And 10 percent of the time the water from the  
22 turnouts has VOCs in it; correct?

23 A Yeah. 5 to 10 percent I guess.

11:54AM 24 Q And where exactly have you told the public that  
25 10 percent of the water they are drinking has low levels of

1 VOCs?

2 A I can't cite where exactly. I know the public  
3 knows because the public comes to our board meetings and brings  
4 up the issue periodically.

11:55AM 5 Q Of the 300 and some thousand people you serve,  
6 have they all been to your meetings?

7 A I would hope not.

8 Q So you would agree that the only people that are  
9 going to know it are the people that come to your meetings;  
11:55AM 10 right?

11 A No. I mean, a lot of people read the information  
12 that's published. There's a lot of other involvement with the  
13 community besides the handful of people that come to public  
14 meetings.

11:55AM 15 Q Now, you started out the direct examination with  
16 using the term -- and excuse me. I'm going to borrow a phrase  
17 from *Star Trek* -- that the prime directive, sort of, of the  
18 water agency is to deliver safe and reliable water -- deliver  
19 water in a safe and reliable manner; correct?

11:55AM 20 A Correct.

21 Q Now, safe, in your opinion, in the last ten  
22 years, has the water company -- the water agency ever delivered  
23 water to the public that was unsafe?

24 A No.

11:56AM 25 Q So that 10 percent of water coming from the

1 turnouts that has VOCs is safe?

2 A It meets the standards -- on the one hand, it  
3 meets certain health department standards. On the other hand,  
4 it doesn't meet our permit which is why we are trying to treat.

11:56AM

5 THE COURT: Let him respond, and, Mr. Blum, I'm  
6 going to ask for the last time that --

7 MR. BLUM: I'm sorry.

8 THE COURT: No. Beyond that. You need to stay  
9 at the that lectern from now on with your hands on the lectern  
10 so you're speaking into the microphone.

11:56AM

11 Q BY MR. BLUM: That wasn't my question,  
12 Mr. Abercrombie. My question is is it safe?

13 A I don't know if I can answer that question.

14 Q Well, you're the head of operations. Who do we  
15 ask if not you?

11:57AM

16 A Maybe you should ask the Division of Drinking  
17 Water.

18 Q Well, the decision to serve the water with VOCs  
19 in it is being made by you. Is the water safe, in your  
20 opinion?

11:57AM

21 A I don't have an opinion.

22 Q So as the head of operations, you have no opinion  
23 on whether the VOC contaminated water that you are serving to  
24 the public is safe?

11:57AM

25 A My opinion is that we need to treat it.



1 Q But is it safe to serve before you treat it?

2 A I don't know.

3 Q Okay. All right.

4 Let's talk about the turnouts. Now, the turnouts

11:57AM 5 is the last place that the water is tested prior to the point  
6 of it being delivered to the public; correct?

7 A It's the last place that water in what would have  
8 been called the wholesale water system is tested before it's  
9 delivered into the retail water system.

11:58AM 10 Q Okay. And prior to the time that it hits the  
11 turnouts, it is -- the water from the Saugus perchlorate  
12 treatment facility, the SPTF, is blended with VOC-free water  
13 from the State Water Project; correct?

14 A Correct.

11:58AM 15 Q Now, since we have been doing a lot of math here,  
16 I'm going to give you a math question.

17 If the contamination at the turnouts is greater  
18 than the contamination for VOCs that was measured as the water  
19 left the SPTF, how could that be?

11:58AM 20 A Well, first of all, you're not sampling this  
21 myriad of locations simultaneously. You're sampling the wells  
22 maybe first thing in the morning, going to the treatment plant  
23 pulling samples, going around town to the various turnouts  
24 pulling samples, and you're done by the end of the day. So,  
11:59AM 25 first of all, you're not sampling and testing the same

1 moleculed water at all these locations. The water levels --  
2 the levels that you see in the wells changes. It's not like  
3 the well produces X every day. That level changes over time.  
4 It fluctuates. It goes up. It goes down. And so you're --  
5 you have a dynamic system where the chemical constituents that  
6 you're sampling is moving around.

11:59AM

7 Q In the last ten years as the head of operations,  
8 are you aware of any occasions in which the sampling at the  
9 SPTF for VOCs has been less than the VOCs tested at the  
10 turnouts?

12:00PM

11 A Not off the top of my head, no.

12 Q Are you aware of a situation back around 2012 in  
13 which the turnouts had -- well, at this point it was PCE well  
14 above the MCL which your own office concluded could not have  
15 been caused by Whittaker.

12:00PM

16 MR. GEE: Objection. Foundation.

17 THE COURT: Sustained. Argumentative as well.

18 Q BY MR. BLUM: In 19 -- around 2012, do you  
19 remember an occasion in which the turnouts had PCE  
20 contamination above the MCLs?

12:00PM

21 MR. GEE: Same objection.

22 THE COURT: Sustained.

23 Q BY MR. BLUM: Sir, as the head of operations,  
24 what have you done to make sure that you're aware of problems  
25 of VOC contamination that may exist at the turnouts?

12:01PM

1           A           We monitor and test the water quality at the  
2           turnouts and numerous locations throughout the system.

3           Q           Do you remember any occasion before 2015 in which  
4           there was a concern about sources of PCE at the turnouts?

12:01PM 5           MR. GEE: Objection. Foundation.

6           THE COURT: Overruled.

7           You may answer.

8           THE WITNESS: Well, I believe I have answered  
9           this. But no, I was not around or involved during that  
12:01PM 10          timeframe. I have since looked into and found the report and  
11          read the report as to what the incident was or at least what  
12          the thinking was for the situation at that particular turnout.

13          Q           BY MR. BLUM: And didn't the report conclude that  
14          the source of the PCE was not Whittaker?

12:02PM 15          A           It did.

16          Q           And since that report, have you seen any other  
17          study that was done by the water agency that discussed why they  
18          were getting the results they were getting for VOCs at the  
19          turnouts?

12:02PM 20          A           No. I mean, that report, in particular, had  
21          results that were really high. I mean, we were seeing a very  
22          high impact and out-of-range detection. And so that led to the  
23          investigation to figure out what the problem is.

24          Q           Sir, who is Jeff Koelewyn?

12:02PM 25          A           Jeff is the water quality lab supervisor is I

1 believe his title.

2 Q Isn't he also the head of regulatory affairs for  
3 the agency?

4 A No. He is the water quality lab supervisor.

12:03PM 5 Q And how long have you worked with him?

6 A Since I've been at the -- at SCV Water. So since  
7 2018.

8 Q Now, by the way, isn't his actual title lab  
9 director?

12:03PM 10 A I don't remember off the top of my head.

11 Q Sir, hasn't there been at least two occasions  
12 where Mr. Koelewyn reported to his superiors that readings of  
13 VOCs found at these turnouts could not have -- could not have  
14 come from Whittaker?

12:03PM 15 A I'm not aware of that.

16 Q If he had made those observations, would you  
17 expect to know about them?

18 A Yes.

19 Q All right. Now, if we assume that there are  
12:03PM 20 sources of VOCs getting to the turnouts that have nothing to do  
21 with Whittaker, would treating the water coming from S-1 and  
22 S-2 for VOCs remove all the VOCs that are at the turnouts?

23 A Treating the water at the S-1 or S-2 treatment  
24 facility will remove the VOCs that are coming through the  
12:04PM 25 treatment facility from Saugus 1 and Saugus 2.

1           Q           But if after that point there is another source  
2 adding VOCs, then the treatment at S-1 and S-2 would not  
3 achieve the effect of getting non-detect at the turnouts;  
4 correct?

12:04PM

5           A           If another source was contributing beyond the  
6 treatments, sure.

7           Q           And since you have been there, have you seen any  
8 report or study done that looks to see whether or not Whittaker  
9 is the only potential source of VOC contamination at the  
10 turnouts?

12:05PM

11          A           As I just indicated a moment ago, I did look at  
12 the report that was done addressing that -- I forgot if it was  
13 SC-1 or whatnot site from the event back in the 2012, '13  
14 timeframe.

12:05PM

15          Q           But nothing after that?

16          A           No.

17          Q           All right. Let's move some -- a little bit to  
18 Well V-205. And if we can put up I think it's 158.

19                      Now, V-201 is just to the left of V-205; correct?

12:05PM

20          A           To the right I think on my map.

21          Q           Okay. But it's right next to it?

22          A           Yes.

23          Q           Okay. Do you know what the word "downgradient"  
24 means?

12:05PM

25          A           Yes. It generally means the flow direction, for

1 lack of a simpler term.

2 Q So it's basically the river -- the way a river  
3 would flow. It flows downgradient; correct?

4 A Correct.

12:06PM 5 Q Same thing for aquifers; right?

6 A Right.

7 Q Is V-205 downgradient from V-201?

8 A I believe it is, yes.

9 Q Okay. When was VOCs or -- sorry.

12:06PM 10 When was perchlorate or VOCs first discovered at  
11 V-201?

12 A I believe that was late 2010 for V-201.

13 Q How about 1997? For perchlorate. The presence  
14 of perchlorate first discovered.

12:06PM 15 A That doesn't jibe with my recollection.

16 Q Was perchlorate discovered in V-201 prior to the  
17 time that V-205 was drilled?

18 A No.

19 Q All right. Let's move on to a different

12:07PM 20 question, and let's talk about the permitting process.

21 Now, the Department of -- the Department of  
22 Drinking Water as of this moment has not made a determination  
23 as to whether or not treatment for VOCs will be required or  
24 whether blending will be required or whether anything will be  
12:07PM 25 required; correct?

1           A           We don't know what their decision is because we  
2 haven't seen a permit or a draft permit.

3           Q           And we don't want to speculate on what they would  
4 eventually do; correct?

12:07PM

5           A           Correct.

6           Q           Now, have you ever seen a -- what's called an  
7 application for a 97-005 permit that was written by  
8 Kennedy Jenks and filed with the DDW in approximately April of  
9 2019?

12:08PM

10          A           I have seen -- I have seen numerous -- there's  
11 been many versions as it's been revised since '04. So I have  
12 seen various versions of that report. I can't say that --  
13 whether I specifically saw that one or not.

14          Q           Well, let me ask it then this way.

12:08PM

15                   In the last version of that report, did the water  
16 agency suggest to the DDW that treatment, the GAC system that  
17 you referred to earlier, was the proper way to deal with the  
18 VOCs at 201?

12:08PM

19          A           I don't remember if that -- if that was in the  
20 report. I know we have had discussions with the Division of  
21 Drinking Water, and I know we asked, if we were to put in  
22 treatment, would we get a permit? And the answer was, you'd  
23 get it pretty quick. But I don't know if it was in that  
24 particular report you're talking about off the top of my head.

12:09PM

25          Q           The last report that you remember, wasn't the

1 proposal made by the water agency to the DDW was that we need  
2 to treat the water for TDS and, when we treat it for TDS, by  
3 the way, as a happenstance that will also deal with any VOC  
4 problems?

12:09PM

5 MR. GEE: Objection. Lacks foundation.

6 THE COURT: Sustained.

7 And also, counsel, you may just want to be  
8 mindful, when you say things like "TDS" and not "total  
9 dissolved solids" where you explain what it means, that it may  
10 be difficult for those not involved in the case to follow.

12:09PM

11 Q BY MR. BLUM: Following the judge's lead, what is  
12 TDS?

13 A Stands for total dissolved solids.

14 Q That is the problem that the water -- that the  
15 water agency would have with the MPDES permit; correct? That  
16 the TDS was too high?

12:09PM

17 A I think the problem was mainly sulfate. It might  
18 have been TDS as well. Those two constituents were potentially  
19 problematic, yes.

12:10PM

20 Q Isn't it true that, the newest application to the  
21 DDW, the focus of the blending focused on lowering the TDS?

22 A There was, as part of the 97-005 process, the  
23 Division of Drinking Water, again, looks at all sorts of  
24 chemicals and minerals, et cetera, in the water. And they

12:10PM

25 apply their overview and decisions as to where they want things



1 to that suite of chemicals and minerals.

2 So besides them saying we don't want to see any  
3 VOCs above the detection limit, they also raise a concern that  
4 TDS which normally wouldn't be an issue -- I mean, you have  
12:11PM 5 total dissolved solids in wells all over the state, and there  
6 are multiple levels of compliance and typically, you know, all  
7 wells meet that. But given the 97-005 process, they reopen and  
8 sort of relook at that. And if you have levels that are above,  
9 say, a secondary standard in the -- they have multiple tiers of  
12:11PM 10 levels, then they would throw in a requirement that you might  
11 have to blend to reduce the TDS because we're dealing with this  
12 97-005 process.

13 Q My question, though, sir, is the focus of the  
14 application was how to blend to lower the TDS; correct?

12:12PM 15 A Correct. At one point they told -- they offered  
16 up do that.

17 Q And the application went on to say that, if we  
18 blend the TDS to reduce that as a side effect will also resolve  
19 the VOC problem; isn't that correct?

12:12PM 20 A That's correct.

21 Q All right. So in terms of the issues that the  
22 agency has with the Water Board, the only issues aren't --  
23 there's other issues other than VOCs and perchlorate that don't  
24 relate to the Whittaker site; correct?

12:12PM 25 A You said issues we have with the Water Board?

1 Q DDW.

2 A We have all sorts of projects and things going on  
3 with DDW.

4 Q Right.

12:13PM 5 And didn't several years ago the water agency  
6 request that the DDW focus on a contaminant that is not at  
7 issue here?

8 MR. GEE: Objection. Lacks foundation. Vague as  
9 to time.

12:13PM 10 THE COURT: Sustained.

11 Q BY MR. BLUM: What's a BFOA?

12 A BFOA is one of a class of chemicals called PFAS,  
13 P-F-A-S. I won't go into the long chemical name. But  
14 essentially it is a class of chemicals that has, in recent  
12:13PM 15 years, come to the attention of regulators as something of  
16 concern. And they have -- they required -- in California they  
17 required a number of water agencies across the state through a  
18 number of orders to conduct sampling for those -- I don't know,  
19 several of those constituents at wells.

12:14PM 20 Q Has the presence in BFOAs in any of the wells  
21 used by the water agency caused the water agency to shut those  
22 wells down?

23 A Yes. We had a number of wells that were  
24 detected, and we took wells offline when they exceeded the  
12:14PM 25 regulatory limit that the DDW had published.

1           Q           Prior to 2019, hadn't the water agency told the  
2     DDW that it wanted -- that it wanted the DDW to focus its  
3     efforts primarily as it relates to the water agency on the BFOA  
4     problem?

12:14PM

5           A           I think what you're getting at, counselor, is we  
6     have, like I said, a number -- myriad of issues before the  
7     Division of Drinking Water. Not all of them have anything to  
8     do with water or health or anything, just other things. We  
9     attempt to help them prioritize a task at times so that they

12:15PM

10    can help, you know, move things along because otherwise, if  
11    they have 20 things on their plate, they sort of pick and  
12    choose and, you know, it seems like nothing gets accomplished.

13                    So we did ask them at one point to focus their  
14    efforts on a particular permit, not that chemical as some

12:15PM

15    nebulous something but on an effort to provide permitting for a  
16    treatment system for a well field that had been taken offline  
17    because of PFAS.

18           Q           Okay. In 2019, didn't the agency change its mind  
19    and tell the agency, no, now we want you to focus on a -- on  
20    a -- we now want the agency -- let me start over again.

12:16PM

21                    In 2019, didn't the agency communicate to DDW  
22    that it would like it to shift from the BFOA issue and focus on  
23    an order requiring treatment of the VOCs for V-201?

24           A           I believe what we would have asked DDW to do and  
25    the reason we shifted them off of PFAS is because we had

12:16PM

1 completed and installed and were now permitted to operate that  
2 first PFAS treatment system. And so we asked them to refocus  
3 their efforts on getting us a permit for V-201 because that has  
4 been languishing for a long time. So it had moved at that  
12:17PM 5 point back to the top of the list.

6 Q Didn't Mr. Alvord -- wait.

7 Before I do that, who is Michael Alvord?

8 A Mike is our -- I think his title is our director  
9 of operations.

12:17PM 10 Q And he directly reports to you; correct?

11 A Correct.

12 Q Didn't Mr. Alvord in 2019 forward an e-mail to  
13 the DDW that came from Mr. Gee stating that you needed the  
14 water agency to give -- to order treatment by GAC for VOCs  
12:17PM 15 because you needed it for this litigation?

16 A I have seen that e-mail.

17 Q And what didn't the e-mail say from Mr. Gee that  
18 you needed the agency to order the water treatment because it  
19 would help you in this litigation?

12:18PM 20 A That may be what that says.

21 Q Now, in making your decisions and ensuring that  
22 water is delivered in a safe and reliable manner, does helping  
23 you litigate -- where does it come with safe and reliable?  
24 Which one is it?

12:18PM 25 A Well, my perspective was -- and we had asked DDW

1 at numerous meetings, tell us what you want. If you want  
2 something painted purple, we will paint it purple if that gets  
3 us a permit. At one point in time we had asked tell us to put  
4 in treatment if that will get us a permit. And they wouldn't.  
12:18PM 5 They basically ultimately say, well, we can't tell you what to  
6 do. We're going to approve or deny a permit. And we had  
7 floated an idea at one point that, well, if we put in  
8 treatment, will we get a permit? And the answer was, yes.

9 Q Is that in an e-mail, by the way?

12:19PM 10 A I don't think so. I mean, it was in a meeting.

11 Q But in making your decisions as the head of  
12 operations in terms of what to do and how to deliver water in a  
13 safe and reliable manner, is helping out litigation a proper  
14 consideration?

12:19PM 15 A No. That's not my consideration.

16 Q Then why did you forward an e-mail to the DDW  
17 saying, we need you to order this because it's helpful for  
18 litigation?

19 A Well, I didn't forward the e-mail I don't think.  
12:19PM 20 I mean, I don't remember.

21 Q Mr. --

22 A I do think that trying to motivate them to give  
23 us a permit is our bottom line concern.

24 Q So you don't -- you don't believe that part of  
12:19PM 25 their job is to help you litigate against Whittaker?

1           A           I don't think, if you ask them, they would think  
2   that's part of their job.

3           Q           They would think that it's part of their job?

4           A           They wouldn't.

12:20PM 5           Q           Then why did you ask them to do it?

6           A           I don't think we were asking them to get us a  
7   permit.

8           Q           Isn't it true that the decisions you have made  
9   such as the one to ask that changed the priorities from the  
10   BFOAs to VOCs dealing with perchlorate and VOCs has been  
11   primarily driven by winning this piece of litigation and not by  
12   science?

13                   MR. GEE: Objection. Asked and answered.

14                   THE COURT: It's argumentative. Sustained.

12:20PM 15           Q           BY MR. BLUM: In making determinations of how to  
16   deal with the perchlorate or the VOC contamination at the  
17   wells, have those decisions been made solely on what is  
18   scientifically proper?

19           A           Can you ask the question again? I'm sorry.

12:21PM 20           Q           You know what, I will move on.

21                   All right. Now, you -- in publications that you  
22   have made to the public, have you described the levels of VOCs  
23   in the water as trace, t-r-a-c-e?

24           A           Probably.

12:21PM 25           Q           What does trace mean to you?

1           A           I don't know what a technical definition of it  
2 is, but I think it would be used to describe levels that are  
3 like below a regulatory limit.

12:21PM 4           Q           So in your mind trace means below the MCL;  
5 correct?

6           A           It might. I don't know what it would mean.

7           Q           Doesn't trace mean barely noticeable?

12:21PM 8           A           If you want it to mean that, I guess it could. I  
9 mean, I don't know what it was meant in whatever publication  
10 you're referring to.

11           Q           All right. Well, let's just look at one I  
12 think -- I'm sorry -- Exhibit 88, page 56. Well, first let's  
13 see the first page. This is the 2018 Santa Clarita  
14 Valley Water report.

12:22PM 15                   (Marked for identification and received  
16 into evidence Exhibit No. 88.)

17           Q           BY MR. BLUM: Is this a report put out by the  
18 water agency?

12:22PM 19           A           We don't do most of the report. It's done by  
20 that consulting engineering firm you see on the bottom,  
21 Luhdorff & Scalmanini. But it is done on our behalf, yes.

22           Q           Is it an expectation what is in that report is  
23 going to be truthful?

24           A           Yes.

12:22PM 25                   MR. BLUM: If we can go to 88.56.

1 Q Do you see the water -- do you see where it says  
2 chloroform towards the end of the first paragraph? Chloroform  
3 and 11, and then it says trace amounts. What does trace in  
4 that sentence mean within that context?

12:23PM

5 A I can only interpret it as small. I don't know  
6 what it means.

7 Q All right. If you can look at the last line of  
8 the -- of that paragraph starting, "Therefore" --

9 A Uh-huh.

12:23PM

10 Q "Therefore, the Valley's water supply complies  
11 with state and federal drinking water standards."

12 That's a correct statement; right?

13 A I believe so, yes.

12:24PM

14 Q Now, if you go down to the next paragraph, do you  
15 see there is a discussion about the -- a report that was done  
16 by a company called CH2M Hill in 2015; correct?

17 A Correct.

12:24PM

18 Q Now, if you see the sentence that says, "The  
19 study concluded, that the likely source was either Whittaker  
20 Bermite site or the Saugus Industrial Center and additional  
21 monitoring would be necessary to identify the specific source."

22 That is a correct statement; right?

23 A I believe so.

24 Q Have you ever read that study?

12:24PM

25 A I have glanced at it. I haven't read it in



1 depth.

2 Q You have seen it but not in depth?

3 A Yes.

4 Q You do know, though, based on what's in the

12:24PM 5 publication here that the study recommended additional

6 monitoring to clarify the source; right?

7 A I believe so, yes.

8 Q That additional monitoring has never been done,

9 has it?

12:25PM 10 A Not to my knowledge.

11 Q Well, why not?

12 A Well, probably because we couldn't get Whittaker

13 or SIC to step up to put in the additional monitoring wells.

14 Q Well, if Mr. -- by the way, do you know who

12:25PM 15 BJ Lechler is?

16 A He's an engineer or whatnot that I believe at the  
17 time was working at CH2M Hill.

18 Q And he's the author of the report; correct?

19 A I believe so.

12:25PM 20 Q Now, if he's correct and part of the problem in

21 the wells is contamination from Saugus Industrial Center,

22 doesn't the agency need to know that so they can properly

23 protect themselves instead of just focusing solely on

24 Whittaker?

12:26PM 25 A You're asking something outside my scope of --

1 THE COURT: Ask another question.

2 Q BY MR. BLUM: As the head of operations, aren't  
3 you concerned that Saugus Industrial Center is a source  
4 contaminating your wells and you don't know about it?

12:26PM 5 A I'm concerned that the wells are contaminated and  
6 we need to put in treatment to deal with them.

7 Q But if the source is not Whittaker, what is --  
8 what is the use of treating just from areas that you believe  
9 Whittaker has contaminated?

12:26PM 10 A We're treating the wells that we know were  
11 contaminated. That's what we're treating. We're not  
12 treating -- we're not proposing to be the person that goes out  
13 and cleans up Whittaker or SIC.

14 MR. BLUM: All right. If we can go to  
12:26PM 15 Exhibit 489, please.

16 Q This is the 2010 management plan that you  
17 discussed with Mr. Gee; correct?

18 A Yes.

19 Q Now, again, this may not be actually written by  
12:27PM 20 the agency, but it's the intent of the agency to be true and  
21 correct.

22 Is that a correct statement?

23 A That is correct.

24 MR. BLUM: If we can go to page 489. I'm sorry.  
12:27PM 25 Page 791. Hold on a minute. I'm sorry. And specifically to

1 the first two sentences above at the top.

2 Q This is talking about -- correct? --  
3 contamination found on the Whittaker site?

4 A That would appear to be correct, yes.

12:28PM 5 Q And the second sentence talking about VOC says,  
6 "These chemicals were used in the manufacture and testing of  
7 fireworks, dynamite, oil-field explosives, and munitions."

8 Correct?

9 A That's what that says, yes.

12:28PM 10 Q And that, in your mind, is a correct statement  
11 because the agency wouldn't have it there otherwise.

12 A I have no way to know one way or the other what  
13 that statement means or -- I mean, that was put in there to --  
14 as a result of the work that the consultants had been doing  
15 preparing the report.

12:28PM

16 Q And you rely upon your consultants to accurately  
17 report the facts in these management plans; correct?

18 A Yes.

19 Q Now, when did Whittaker manufacture fireworks?

12:29PM 20 A I don't know.

21 Q When did Whittaker manufacture dynamite?

22 A I don't know when Whittaker did any of that  
23 stuff.

24 Q So in reading this, can you testify here that,  
12:29PM 25 other than in munitions, that Whittaker manufactured any of

1 these things that resulted in VOC contamination?

2 A I can't because I'm not the one who wrote that.

3 Q Now, if we can go to -- well, before I go, how  
4 much -- well, let's just go to page 795.

12:29PM

5 THE COURT: We're actually going to break. It's  
6 now 12:30. We're going to break for 30 minutes. This is going  
7 to be our lunch break. It may be the only break that we have  
8 for the rest of the day. I do expect we're going to break at  
9 2:30. So we will end early or at least when I indicated we  
10 would.

12:30PM

11 So please remember, don't speak to anyone about  
12 the case, the people, or the subject matter involved. Continue  
13 to keep an open mind and enjoy the break.

14 We will see you back at 1:00 o'clock, everyone.

12:30PM

15 (The following proceedings were held in  
16 open court outside the presence of the jury:)

17 MR. BLUM: Your Honor, I apologize. Can I bring  
18 one issue up?

19 THE COURT: We're on the record outside the  
20 presence of the jury.

12:30PM

21 Mr. Blum.

22 MR. BLUM: Yes, Your Honor. Mr. Abercrombie was  
23 one of the 30(b)(6) witnesses for the plaintiff in the issue of  
24 damages. I'm going to get to those issues. I only have about  
25 a half hour left after the break. I've talked to the counsel

12:30PM

1 for plaintiff about what that means to be a 30(b)(6) witness.

2 THE COURT: All right. You can provide it to my  
3 courtroom deputy. And you want me to read it after the break?

4 MR. BLUM: Please, Your Honor.

12:31PM 5 MR. RICHARD: Can I make one short request? It  
6 would be helpful, as I did and counsel did, if Mr. Blum can  
7 identify before he publishes a document whether or not he  
8 believes it's been stipulated to. It would save us from  
9 scrambling. I thought that's what Your Honor had --

12:31PM 10 THE COURT: I did. I was going to interject  
11 that, but I thought I also had indicated that, if someone puts  
12 something up, whether they say it or not, that's what it means.  
13 But if that is your request, it's a fair request, and I will  
14 require you to do it.

12:31PM 15 MR. BLUM: Your Honor, these are all exhibits we  
16 have given them.

17 THE COURT: I understand. He wants to have a  
18 level of assurance he doesn't have to scramble to make an  
19 objection, and I think that's a fair point.

12:31PM 20 All right. We are in recess until 1:00 o'clock.  
21 Thank you.

22 (A lunch recess was taken until  
23 1:00 p.m. of the same day.)  
24  
25

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CERTIFICATE OF OFFICIAL REPORTER

I, MIRANDA ALGORRI, FEDERAL OFFICIAL REALTIME COURT REPORTER, IN AND FOR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT TO SECTION 753, TITLE 28, UNITED STATES CODE THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT THE TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

DATED THIS 18TH DAY OF NOVEMBER, 2021.

/S/ MIRANDA ALGORRI

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MIRANDA ALGORRI, CSR NO. 12743, CRR  
FEDERAL OFFICIAL COURT REPORTER

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